

TO; THE CLERK OF THE,
UNITED STATES DISTRICT COURT, I
MICHAEL J. NISSEN, BEING INCARCERATED
AND INDIGENT, UNDER COURT ORDERED
FORMA PAUPERIS DO IMPOSE UPON THIS
COURT TO MAKE A COPY OF THIS COMPLETE
LEGAL FILE COURT STAMPED AND ENTERED
AS LEGAL DOCUMENTATION FOR MY LEGAL
FILES, TO BE SENT BACK TO MICHAEL J.
NISSEN AT ADDRESS LISTED BELOW, I
GREATLY APPRECIATE YOUR EFFORTS AND
TROUBLES ON THIS MATTER AT HAND.

DATED: 02/10/2020

RESPECTFULLY SUBMITTED,
Michael J. Nissen
MICHAEL J. NISSEN
(Defendant)

MICHAEL J. NISSEN

02508151

P.O. BOX 3540

CIBOLA COUNTY CORRECTIONAL CENTER

MILAN, NM 87021

FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

FEB 19 2020

MITCHELL R. ELFERS
CLERK

FILED

ATTORNEY OR DEFENDANT WITHOUT ATTORNEY (NAME, ADDRESS) MICHAEL J NISSEN 02508151 P.O. BOX 3540 CIBOLA COUNTY CORRECTIONS CENTER MILAN, NM 87021		UNITED STATES DISTRICT COURT ALBUQUERQUE, NEW MEXICO FEB 19 2020 MITCHELL R. ELFERS CLERK
UNITED STATES DISTRICT COURT 333 LOMAS BLVD, NW ALBUQUERQUE, NM 87102		CASE # 1:19-CR-00077-JB
DEFENDANT; MICHAEL J NISSEN 03/08/1965		
PROOF OF SERVICE BY MAIL		

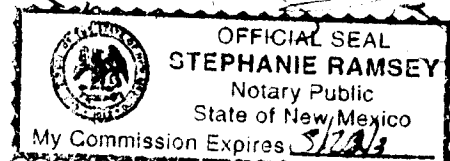
- 1) I AM OVER THE AGE OF 18 AND NOT A PARTY TO THIS ACTION
- 2) I SERVED THE FOLLOWING: MOTION TO DISMISS INFORMATION OF ILLEGAL CONVICTIONS ON COUNTS I AND II FOR FEDERAL ABUSE OF ARBITRARY POWER AND JUDICIAL MISCONDUCT, AND EXHIBIT "A".
- 3) I SERVED A COPY OF THE DOCUMENTS ON 02/10/2020 AS FOLLOWS (DATE)
☒ BY MAIL; I SERVED THE DOCUMENTS BY ENCLOSING THEM IN AN ENVELOPE AND DEPOSITING THE SEALED ENVELOPE WITH THE UNITED STATES POSTAL SERVICE WITH THE POSTAGE FULLY PREPAID TO THE ADDRESS SHOWN BELOW:
 UNITED STATES DISTRICT COURT
 333 LOMAS BLVD, NW
 ALBUQUERQUE, NM 87102

4) I AM:

☒ NOT A REGISTERED NEW MEXICO PROCESS SERVER.

5) MY NAME, ADDRESS, TELEPHONE NUMBER

PAUL G. CARRILLO, JR.
 6503 KARLSON DR. NE
 ALBUQUERQUE, N.M. 87113



6) I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEW MEXICO THAT THE FOREGOING IS TRUE AND CORRECT: DATE: 02/10/2020

PAUL G. CARRILLO, JR.
 (TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)

(SIGNATURE OF PERSON WHO SERVED THE PAPERS)

PROOF OF SERVICE BY MAIL

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,
(PLAINTIFF)

DATE: 02/05/2020

VS.

MICHAEL J. NISSEN
(DEFENDANT)

MOTION TO DISMISS INFORMATION
OF ILLEGAL CONVICTIONS ON COUNTS
I AND II FOR FEDERAL ABUSE OF
ARBITRARY POWER AND JUDICIAL
MISCONDUCT.

EXHIBIT "A" PROVIDED

CASE # 1:19-CR-00077-JB

MOTION TO DISMISS INFORMATION OF ILLEGAL
CONVICTIONS ON COUNTS I AND II FOR FEDERAL ABUSE OF
ARBITRARY POWER AND JUDICIAL MISCONDUCT

NOW COMES, MICHAEL J. NISSEN, (HEREIN-AFTER,
DEFENDANT) IN THE ABOVE ENTITLED ACTION, RESPECTFULLY
MOVES THE HONORABLE CROWN COURT OF JUDGE JAMES
O' BROWNING TO ORDER A DISMISSAL OF INFORMATION
OF ILLEGAL CONVICTIONS ON COUNTS I AND II FOR
FEDERAL ABUSE OF ARBITRARY POWER AND JUDICIAL
MISCONDUCT. DEFENDANT AFFIRMATIVELY STATES IN NO
PARTICULAR ORDER THE FOLLOWING HEREIN, LAWS, ACTS,
ARE WRITTEN STATUTORY DEFINITIONS OF LAW PROVIDED
BY BLACKS LAW DICTIONARY. THE DEFENDANT WHOLE
HEARTEDLY BELIEVES THIS FEDERAL CROWN COURT

1 HAS OVERSTEPPED CONSTITUTIONAL LAW OF DUE PROCESS
 2 AND EQUAL PROTECTION OF THE LAW GUARANTEED TO ALL
 3 AMERICANS REGARDLESS TO THE FEDERAL MARITIME
 4 COMMON LAW PRACTICE. ALL AMERICANS ARE PROTECTED
 5 BY ARTICLE VI, SECTION II OF THE CONSTITUTION
 6 WHICH ALL JUDGES ARE BOUND TO REGARDLESS TO THE
 7 CONTRARY, NOTWITHSTANDING. THE SUPREME LAW OF THE
 8 LAND SUPERCEDES ALL LAW AND IS THE PERFECT STATUTE
 9 AS WRITTEN BY OUR FOUNDING FATHERS. SO IN ENDING
 10 OF OPENING STATEMENT BY DEFENDANT, THE DEFENDANT
 11 REQUESTS AN IMMEDIATE ORDER OF DISMISSAL OF
 12 INFORMATION AND RELEASE FROM AN ILLEGAL WRONGFUL
 13 INCARCERATION.

14

15 1) "MOBILE TELECOMMUNICATIONS SOURCING ACT" [4 U.S.C. § 114
 16 -126]. NO MATTER WHERE CALL ORIGINATES, TERMINATES, OR
 17 PASSES THRU, UPON JUDGEMENT IS INVALID BY FEDERAL
 18 CROWN COURT LAW.

19

20 2) MOBILE TELECOMMUNICATIONS, [47 U.S.C. § 201],
 21 IS UNENFORCEABLE AND UNLAWFUL.

22

23 3) "RELIGIOUS FREEDOM RESTORATION ACT", [47 U.S.C. §
 24 2000BB-4]. LIMITS TO CONGRESSIONAL INTERSTATE AND
 25 FOREIGN COMMERCE DO EXIST. CONGRESS MAY NOT, (1)
 26 CREATE A STATUTORY RIGHT PROHIBITED BY SOME
 27 OTHER PROVISION OF THE CONSTITUTION, (2) REMOVE
 28 RIGHTS GRANTED BY THE CONSTITUTION, OR (3) CREATE

1 A RIGHT INCONSISTENT WITH AN OBJECTIVE OF A
2 CONSTITUTIONAL PROVISION.

3
4 4) FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO
5 THE UNITED STATES CONSTITUTION PROVIDES THAT "CONGRESS
6 SHALL MAKE NO LAW RESPECTING AN ESTABLISHMENT OF
7 RELIGION, OR PROHIBITING THE FREE EXERCISE
8 THEREOF... ET AL".

9
10 5) ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT
11 TO UNITED STATES CONSTITUTION WHICH PROVIDES THAT
12 "CONGRESS SHALL MAKE NO LAW RESPECTING AN
13 ESTABLISHMENT OF RELIGION, OR PROHIBITING THE
14 FREE EXERCISE THEREOF... ET AL", SUCH LANGUAGE
15 PROHIBITS A STATE OR THE FEDERAL CROWN COURT
16 GOVERNMENT FROM SETTING UP A CHURCH, OR PASSING
17 LAWS WHICH AID ONE, OR ALL, RELIGIONS, OR GIVING
18 REFERENCE TO ONE RELIGION, OR FORCING BELIEF OR
19 DISBELIEF IN ANY RELIGION.

20
21 6) DUE PROCESS CLAUSE STATES, TWO SUCH CLAUSES
22 ARE FOUND IN THE UNITED STATES CONSTITUTION, ONE
23 IN THE FIFTH AMENDMENT PERTAINING TO THE
24 FEDERAL GOVERNMENT, THE OTHER IN THE FOURTEENTH
25 AMENDMENT WHICH PROTECTS PERSONS FROM STATE
26 ACTIONS, THERE ARE TWO ASPECTS: PROLEDURAL, IN
27 WHICH A PERSON IS GUARANTEED FAIR PROLEDURES
28 AND SUBSTANTIVE WHICH PROTECTS A PERSON'S

1 PROPERTY FROM UNFAIR GOVERNMENTAL INTERFERENCE
2 OR TAKING.

3
4 7) SUBSTANTIVE DUE PROCESS STATES, THAT SUCH
5 MAY BE BROADLY DEFINED AS THE CONSTITUTIONAL
6 GUARANTEE THAT NO PERSON SHALL BE ARBITRARILY
7 DEPRIVED OF HIS LIFE, LIBERTY, OR PROPERTY; THE
8 ESSENCE OF SUBSTANTIVE DUE PROCESS IS PROTECTION
9 FROM ARBITRARILY AND UNREASONABLE ACTION.

10
11 8) EQUAL PROTECTION OF THE LAW / CLAUSE PROVISION
12 IN THE FOURTEENTH AMENDMENT TO UNITED STATES
13 CONSTITUTION. THE CONSTITUTIONAL GUARANTEE OF
14 EQUAL PROTECTION OF THE LAWS MEANS THAT NO PERSON
15 OR CLASS OF PERSONS SHALL BE DENIED THE SAME
16 PROTECTION OF THE LAWS WHICH IS ENJOYED BY
17 OTHER PERSONS OR OTHER CLASSES IN LIKE CIRCUMSTANCES
18 IN THEIR LIVES, LIBERTY, PROPERTY, AND IN THEIR
19 PURSUIT OF HAPPINESS.

20
21 9) ARBITRARY STATES, THAT NOT DONE ACCORDING
22 TO REASON OR JUDGEMENT; DEPENDING ON THE WILL
23 ALONE; ABSOLUTELY IN POWER; CAPRICIOUSLY;
24 TYRANNICAL; DESPOTIC, WITHOUT FAIR SOLID AND
25 SUBSTANTIVE CAUSE; THAT IS, WITHOUT CAUSE BASED
26 UPON THE STATUTORY WRITTEN LAW, NOT GOVERNED BY
27 ANY FIXED RULES OR STANDARDS. ORDINARILY, ARBITRARY
28 IS SYNONYMOUS WITH BAD FAITH OR FAILURE TO

1 EXERCISE HONEST JUDGEMENT AND AN ARBITRARY ACT
2 WOULD BE ONE PERFORMED WITHOUT ADEQUATE
3 DETERMINATION OF PRINCIPLE AND ONE NOT FOUNDED
4 IN NATURE OF THINGS.

5

6 10) THE ENUMERATED POWERS SPECIFICALLY
7 DELEGATED BY THE CONSTITUTION TO SOME BRANCH OR
8 AUTHORITY OF THE NATIONAL GOVERNMENT, AND WHICH
9 ARE NOT DENIED TO THAT GOVERNMENT OR RESERVED
10 TO THE STATES OR TO THE PEOPLE. THE POWERS
11 SPECIFICALLY GIVEN TO CONGRESS ARE ENUMERATED
12 IN ARTICLE I OF THE UNITED STATES CONSTITUTION.

13

14 11) THE INHERENT POWERS FOR THOSE WHICH ARE
15 ENJOYED BY THE POSSESSORS OF NATURAL RIGHTS,
16 WITHOUT HAVING BEEN RECEIVED FROM ANOTHER.
17 SUCH AS THE POWERS OF A PEOPLE TO ESTABLISH
18 A FORM OF GOVERNMENT, OF A FATHER TO CONTROL
19 HIS CHILDREN. SOME OF THESE ARE REGULATED AND
20 RESTRICTED IN THEIR EXERCISE BY LAW, BUT ARE
21 NOT TECHNICALLY CONSIDERED IN THE LAW AS POWERS,

22

23 12) THE SUPREMACY CLAUSE OF ARTICLE VI, OF
24 UNITED STATES CONSTITUTION, WHICH DECLARES
25 THAT ALL LAWS MADE IN PURSUANCE OF THE
26 CONSTITUTION AND ALL TREATIES MADE UNDER THE
27 AUTHORITY OF THE UNITED STATES SHALL BE THE
28 SUPREME LAW OF THE LAND AND SHALL ENJOY LEGAL

1 SUPERIORITY OVER ANY CONFLICTING PROVISION
2 OF A STATE CONSTITUTION OR LAW.

3
4 13) IN PURSUANT THEREOF FOLLOWING AFTER OR
5 FOLLOWING OUT. TO EXECUTE OR CARRY OUT IN
6 ACCORDANCE WHICH OR BY REASON OF SOMETHING. TO
7 DO IN CONSEQUENCE OR IN PROSECUTION OF ANYTHING.
8 PURSUANT TO, MEANS IN THE COURSE OF CARRYING
9 OUT; IN CONFORMANCE TO OR AGREEMENT WITH;
10 ACCORDING TO AND, WHEN USED IN A STATUTE, IS A
11 RESTRICTIVE TERM.

12
13 14) LEGISLATIVE POWERS ARE THE LAWMAKING
14 POWERS OF A LEGISLATIVE BODY, WHOSE FUNCTIONS
15 INCLUDE THE POWER TO MAKE, ALTER, AMEND AND
16 REPEAL LAWS. IN ESSENCE, THE LEGISLATURE HAS THE
17 POWER TO MAKE LAWS AND SUCH POWER IS REPOSED
18 EXCLUSIVELY IN SUCH BODY THOUGH IT MAY DELEGATE
19 RULE MAKING AND REGULATORY POWERS TO DEPARTMENTS
20 IN THE EXECUTIVE BRANCH, IT MAY NOT, HOWEVER
21 DELEGATE ITS LAW MAKING POWERS NOR IS THE
22 "JUDICIAL" BRANCH PERMITTED TO OBTRUDE INTO
23 ITS LEGISLATIVE POWERS. THE ENUMERATED POWERS
24 OF CONGRESS ARE PROVIDED FOR IN ARTICLE I OF THE
25 UNITED STATES CONSTITUTION.

26
27 15) DEFENDANTS CELL PHONE SERVICE UPON NOTICE
28 OF T-MOBILE WAS AND IS UNCAPABLE OF ALLEGED

1 PROSECUTORS PRESENTATION TO CROSS INTERSTATE
2 LINES FOR THAT SERVICE WASNT PRESENT FOR CELL
3 PHONE AGE . INTRASTATE SERVICE ONLY AS STATED AND
4 ALLEGED BY F.B.I. AGENT JON URREEBRODE [SIC] IN UNITED
5 STATES DISTRICT ATTORNEYS DISCOVERY.

6

7 16) [8 U.S.C. § 1101 (A)(2)] THE TERM "NATIONAL" MEANS A
8 PERSON OWING PERMANENT ALLEGIANCE TO A STATE

9

10 17) [8 U.S.C. § 1452] NON CITIZEN NATIONAL

11

12 18) PENNOYER RULE IS A RULE TO THE EFFECT THAT
13 A COURT WHICH HAS NO PERSONAL JURISDICTION OVER
14 A DEFENDANT MAY NOT ISSUE AN IN PERSONAM
15 JUDGEMENT OR DECREE AGAINST HIM. [PENNOYER V.
16 NEFF, 95 U.S. 714; 24 L. ED. 565].

17

18 19) LACK OF SUFFICIENT CALL SUMMARY EVIDENCE
19 FOR GRAND JURY INDICTMENT. F.B.I. USED A N.M.S.P
20 CALL LOG WHICH CLEARLY WITHOUT A DOUBT IS
21 INTRASTATE.

22

23 20) ALL FOLLOWING UNITED STATES CONSTITUTIONAL
24 AMENDMENTS VIOLATED BY THE FEDERAL CROWN COURTS
25 ARBITRARY ABUSE OF POWER AND JUDICIAL MISCONDUCT
26 OF ADHEREING TO UNITED STATES CONSTITUTION, WHICH
27 ALL JUDGES ARE BOUND TO REGARDLESS TO THE CONTRARY,
28 NOTWITHSTANDING BY WAY OF ARTICLE VI, SECTION II.

1 FIRST, SECOND, FOURTH, FIFTH, SIXTH, EIGHTH, NINETH,
2 TEENTH, ELEVENTH, FOURTEENTH, TWENTY-THIRD.

3
4 21) FREEDOM OF SPEECH IS PURE SPEECH BESTOWED AND
5 ENDOWED UPON HUMANS AS A NATURAL RIGHT BEFORE ANY
6 GOVERNMENT CAME, "CONGRESS SHALL MAKE NO LAW
7 RESPECTING AN ESTABLISHMENT OR PROHIBITING THE
8 FREE EXERCISE THEREOF . . .".

9
10 22) THE RIGHT TO BEAR ARMS SHALL NOT BE
11 INFRINGED UPON.

12
13 23) ILLEGAL CONFISCATION OF SHOTGUN WITHOUT
14 SEARCH WARRANT BY NEW MEXICO STATE POLICE OFFICER
15 JORDAN BURD AT INITIAL TRAFFIC STOP ON NOVEMBER 02,
16 2018. DEFENDANTS VEHICLE IS AN EXTENSION OF DEFENDANTS
17 PROPERTY.

18
19 24) DEFENDANTS RIGHTS UNDER FED. R. CRIM. P.,
20 RULE 6, 12, 16 OF GRAND JURY, DEFENDANT WAS NEVER
21 NOTIFIED OF GRAND JURY INVESTIGATION AGAINST HIM.

22
23 25) INEFFECTIVE ASSISTANCE OF COUNSEL BY
24 FEDERAL PUBLIC DEFENDER, MELISSA A. MORRIS, ESQUIRE,
25 PRIVATE PRACTICE BARRISTER KENNETH A. CLERIA, ESQUIRE,
26 CONTRACT JUSTICE BARRISTER SUSAN PORTER, ESQUIRE.

27
28 26) CRUEL AND UNUSUAL PUNISHMENT PER EIGHTH

1 AMENDMENT OF UNITED STATES CONSTITUTION FOR
 2 ILLEGAL WRONGFUL INCARCERATION DUE TO LACK OF
 3 INSUFFICIENT, IMPROPER EVIDENCE OF CALL SUMMARY
 4 PRESENTATION TO RECEIVE A GRAND JURY INDICTMENT
 5 BY F.B.I. AGENT JON URREBRODE [sic].

6
 7 24) ENUMERATED POWERS CLAUSE PREVENTS JUDICIAL
 8 PROCEEDINGS OF INTERSTATE AND FOREIGN COMMERCE
 9 BY WAY OF LEGISLATIVE POWER DEFINITION OF
 10 WRITTEN STATUTORY LAW WHICH THE FEDERAL CROWN
 11 COURT OF MARITIME LAW IS BOUND TO BY THE SUPREME
 12 LAW OF THE LAND REGARDLESS TO THE CONTRARY,
 13 NOTWITHSTANDING.

14
 15 28) POWERS RESERVED TO STATE FOR CONSTITUTIONAL
 16 DE JURE LAW, DEFENDANT IS NOT IN FEDERAL POSSESSION
 17 OR DOMICILED ON FEDERAL TERRITORY, NATIONALITY
 18 IS THAT OF THE NEW MEXICO REPUBLIC BY BIRTH AND
 19 A NON CITIZEN NATIONAL SOVEREIGN OF A FREE AND
 20 INDEPENDANT STATE, THEREFORE THE DE FACTO, DESPOTIC,
 21 MALICIOUSLY EGREGIOUS FEDERAL CROWN COURT OF THE
 22 DISTRICT OF COLUMBIA HAS NO IN PERSONAM
 23 JURISDICTION OVER A [8 U.S.C. § 1101(A)(21)]; OR
 24 AN [8 U.S.C. § 1452] NON CITIZEN NATIONAL OF THE
 25 FOURTEENTH AMENDMENT OF UNITED STATES CONSTITUTION.

26
 27 29) ELEVENTH AMENDMENT OF UNITED STATES
 28 CONSTITUTION, STATES NO FOREIGN STATE CAN BRING

1 SUIT OF LAW OR EQUITY AGAINST DEFENDANTS
2 CITIZENSHIP STATUS.

3
4 30) FOURTEENTH AMENDMENT OF UNITED STATES
5 CONSTITUTION GUARANTEES RIGHTS OF CITIZENSHIP,
6 PRIVILEGES AND IMMUNITIES, DUE PROCESS CLAUSE AND
7 EQUAL PROTECTION OF THE LAW / CLAUSE PROVIDE
8 PROTECTION AGAINST ILLEGAL FEDERAL OBTRUSION
9 OF A NON CITIZEN SOVEREIGN NATIONAL OF THE
10 UNITED STATES OF AMERICA.

11
12 31) TWENTY - THIRD AMENDMENT TO UNITED
13 STATES CONSTITUTION REPEALED AUGUST 1978 .
14 TYRANNY RULE OF THE DE FACTO, DESPOTIC, MONARCHY
15 FEDERAL CROWN COURT OF THE DISTRICT OF COLUMBIA
16 IS UNLAWFUL AND ILLEGAL BY WAY OF UNITED
17 STATES CONSTITUTION, AND THE DECLARATION OF
18 INDEPENDENCE.

19
20 32) EX POST FACTO LAW PERTAINING TO
21 STATUTORY INTERSTATE AND FOREIGN COMMERCE
22 ILLEGAL AND UNLAWFUL, UNENFORCEABLE UNDER
23 WRITTEN STATUTORY DEFINITION OF LAW.

24
25 33) UNDER [18 U.S.C. § 875 (c)], ANY THREAT TO
26 INJURE A PERSON IS REQUIRED. DEFENDANT
27 CLEARLY STATED, AS MENTIONED ON TAPED
28 RECORDING, REFERENCED TO A PIG OF THE FOUR

1 LEGGED HOOFED FAMILY. JUDGE JAMES O' BROWNING
2 USED HIS ARBITRARY ABUSE OF POWERS FORBIDDEN
3 BY THE UNITED STATES SUPREME COURT TO RECONSTRUCT
4 DEFENDANTS STATEMENT. SECOND COUNT WITH
5 CONVICTION THERE WAS NO STATEMENT WHEN ALL
6 CALLS MADE TO SAME NUMBER WERE RECORDED.

7
8 34) GOVERNMENT OF UNITED STATES DISTRICT
9 COURT LACKS SUBJECT MATTER JURISDICTION
10 OVER THE IN PERSONAM OF DEFENDANT

11
12 35) FALSE TESTIMONY AND HIDDEN EVIDENCE
13 OF SELECTIVE MALICIOUS MALPRACTICE OF
14 PROSECUTORIAL AND DEFENDANTS COUNSEL MISCONDUCT.

15
16 36) MONROE DOCTRINE EGREGIOUSLY VIOLATED
17 BY THIS BLATANT AND SHAMEFUL FEDERAL CROWN
18 COURT,

19
20 37) DEFENDANT WAS SHACKLED AT ANKLES
21 DURING TRIAL WHICH IS A DUE PROCESS AND
22 EQUAL PROTECTION OF THE LAWS VIOLATION, WHICH
23 CREATED PREJUDICE AGAINST DEFENDANT.

24
25 38) DEFENDANT NOT PRODUCED AT EVIDENTIARY
26 HEARING WHICH IS DUE PROCESS AND EQUAL
27 PROTECTION OF THE LAW VIOLATION.

28

1 39) CIVIL LIBERTIES ARE PERSONAL, NATURAL
2 RIGHTS GUARANTEED AND PROTECTED BY THE
3 CONSTITUTION; E.G. FREEDOM OF SPEECH, PRESS,
4 FREEDOM FROM DISCRIMINATION, ETC. BODY OF LAW
5 DEALING WITH NATURAL LIBERTIES, SHORN OF
6 EXCESSES WHICH INVADE EQUAL RIGHTS OF OTHERS.
7 CONSTITUTIONALLY, THEY ARE RESTRAINTS ON
8 GOVERNMENT.

9
10 40) CIVIL RIGHTS ACTS ARE FEDERAL
11 STATUTES ENACTED AFTER CIVIL WAR, AND MORE
12 RECENTLY, INTENDED TO IMPLEMENT AND GIVE
13 FURTHER FORCE TO BASIC PERSONAL RIGHTS
14 GUARANTEED BY THE CONSTITUTION. SUCH ACTS
15 PROHIBIT DISCRIMINATION BASED ON RACE, COLOR,
16 AGE, SEX OR RELIGION.

17
18 41) DEFENDANTS BILL OF RIGHTS ARE A
19 FORMAL AND EMPHATIC LEGISLATIVE ASSERTION
20 AND DECLARATION OF POPULAR RIGHTS AND
21 LIBERTIES. THAT PORTION OF THE CONSTITUTION
22 GUARANTEEING RIGHTS AND PRINCIPLES AND
23 PRIVILEGES TO THE INDIVIDUALS.

24
25 42) FEDERAL BUREAU OF INVESTIGATION IS
26 CHARGED WITH INVESTIGATING ALL VIOLATIONS
27 OF FEDERAL LAWS WITH "EXCEPTION" OF THOSE
28 WHICH HAVE BEEN ASSIGNED "LEGISLATIVE"

1 ENACTMENT OR OTHERWISE TO SOME OTHER
2 FEDERAL AGENCY.

3
4 43) UNCONSTITUTIONAL STATUTE IS A SELF
5 CONTRADICTING EXPRESSION SINCE A STATUTE IN CONFLICT
6 WITH THE CONSTITUTION IS NOT LAW BUT IS WHOLLY
7 VOID AND AS INOPERATIVE IN LEGAL CONTEMPLATION
8 AS IF IT HAD NEVER BEEN PASSED, NOTWITHSTANDING
9 IT HAS THE FORM AND NAME OF LAW. (2) WHEN A
10 STATUTE IS ADJUDGED TO BE UNCONSTITUTIONAL, IT
11 IS AS IF IT HAD NEVER BEEN. RIGHTS CANNOT BE
12 BUILT UP UNDER IT. CONTRACTS WHICH DEPEND UPON
13 IT FOR THEIR CONSTRUCTION ARE VOID. IT CONSTITUTES
14 A PROTECTION TO NO ONE WHO HAS ACTED UNDER
15 IT, AND NO ONE CAN BE PUNISHED FOR HAVING
16 REFUSED OBEDIENCE TO IT BEFORE THE DECISION
17 WAS MADE. AND WHAT IS TRUE OF AN ACT VOID
18 IN TOTO IS TRUE ALSO AS TO ANY PART OF AN
19 ACT WHICH IS FOUND TO BE UNCONSTITUTIONAL
20 AND WHICH CONSEQUENTLY IS TO BE REGARDED AS
21 HAVING NEVER AT ANY TIME BEEN PASSED AND IN
22 LEGAL EFFECT. (3) AS USED IN THE UNITED STATES
23 CODE, THE TERM "UNCONSTITUTIONAL" HAS REFERENCE
24 TO THE UNITED STATES CONSTITUTION, NOT A STATE
25 CONSTITUTION. [16 AM J2D CONST L § 177]
26 [RE RAHRER (CC KAN) 43 F 554. 3. ANNO; 83 L. ED. 1195]

27
28 44) CIVIL LAWS ARE THE BODY OF LAW WHICH

1 EVERY PARTICULAR NATION, COMMONWEALTH, OR CITY
 2 HAS ESTABLISHED PECULIARLY FOR ITSELF; MORE
 3 PROPERLY CALLED MUNICIPEL LAW, TO DISTINGUISH
 4 IT FROM THE LAW OF NATURE, AND FROM INTER-
 5 NATIONAL LAW. LAWS CONCERNED WITH CIVIL
 6 OR PRIVATE RIGHTS AND REMEDIES, AS CONTRASTED
 7 WITH CRIMINAL LAWS.

8
 9 45) CIVIL OFFENSE TERM USED TO DESCRIBE
 10 VIOLATIONS OF STATUTES OR ORDINANCES MAKING THE
 11 PARTICULAR ACT A PUBLIC NUISANCE, ALSO DESCRIBES
 12 AN OFFENSE WHICH IS MALUM PROHIBITUM AND NOT
 13 CONSIDERED REPREHENSIBLE.

14
 15 46) MARITIME JURISDICTION OVER MARITIME
 16 CAUSES IS GRANTED TO FEDERAL DISTRICT COURTS,
 17 [28 U.S.C. § 1333]. PROCEDURE IN MARITIME ACTIONS
 18 IS GOVERNED BY THE FED. R. CIVIL P. AND SUPP.

19
 20 47) MARITIME LAW IS THAT WHICH THE CONGRESS
 21 HAS ENACTED OR THE FEDERAL COURTS, SITTING IN
 22 ADMIRALTY OR IN THE EXERCISE OF THEIR MARITIME
 23 JURISDICTION, HAVE DECLARED AND WOULD APPLY.
 24 THAT SYSTEM OF LAW WHICH PARTICULARLY RELATES
 25 TO MARINE COMMERCE AND NAVIGATION, TO BUSINESS
 26 TRANSACTIONS AT SEA OR RELATING TO NAVIGATION,
 27 TO SHIPS AND SHIPPING, TO SEAMEN, TO THE
 28 TRANSPORTATION OF PERSONS AND PROPERTY BY SEA,

1 AND TO MARINE AFFAIRS GENERALLY. THE LAW
2 RELATING TO HARBORS, SHIPS, AND SEAMEN, DIVIDED
3 INTO A VARIETY OF SUBJECT AREA'S, SUCH AS
4 THOSE CONCERNING HARBORS, PROPERTY OF SHIPS,
5 DUTIES AND RIGHTS OF MASTERS AND SEAMEN,
6 CONTRACTS OF AFFREIGHTMENT, AVERAGE, SALVAGE,
7 ETC. IT EXTENDS TO CIVIL MARINE TORTS AND
8 INJURIES, ILLEGAL DISPOSSESSION OR WITHHOLDING
9 OF POSSESSION FROM THE OWNERS OF SHIPS,
10 MUNICIPAL SEIZURES OF SHIPS, ETC.

11 SUBSTANTIVELY, IN THE UNITED STATES,
12 IT IS FEDERAL LAW, AND JURISDICTION TO
13 ADMINISTER IT IS VESTED IN THE FEDERAL COURTS,
14 THOUGH NOT TO THE ENTIRE EXCLUSION OF THE
15 COURTS OF THE STATES.

16
17 WHEREFORE, THE DEFENDANT HUMBLLY
18 PRAYS THIS FEDERAL MARITIME CROWN COURT
19 ORDERS A COMPLETE AND FULL DISCHARGE
20 OF ANY CRIMINAL WRONG DOING ON ONE OR
21 ALL OF THE POINTS OF AUTHORITY HEREBY
22 IN THIS MOTION, AND CONTINUES TO PRAY
23 FOR DISMISSAL OF INFORMATION ON COUNTS
24 I AND II BASED UPON THE CONSTITUTIONAL
25 LAW OF THE UNITED STATES OF AMERICA.
26 DEFENDANT HAS NOT TO DATE COMMITTED ANY
27 CIVIL DISRUPTION OF INTERSTATE AND FOREIGN
28 COMMERCE OF MARITIME LAW PUNISHABLE

1 ONLY BY CIVIL ADJUDICATION AND LITIGATION
 2 OF THE FEDERAL RULE CIVIL PROCEDURE GUIDELINES.
 3 SO UPON ORDER OF DISMISSAL OF INFORMATION
 4 ON COUNTS I AND II BY THE FEDERAL DISTRICT
 5 COURT VENUE OF JUDGE JAMES O' BROWNING,
 6 DEFENDANT SEEKS IMMEDIATE REMOVAL FROM
 7 AN ILLEGAL INCARCERATION OF WRONGFUL
 8 ADJUDICATION BY THIS COURT. DEFENDANT
 9 ALSO SEEKS A JUST, PROPER AND CIVILALLY
 10 EQUITABLE RESOLVE FOR THE UNJUST, IMPROPER,
 11 WRONGFUL MISCARRIAGE OF JUSTICE THAT THE
 12 COURTS DEEM APPROPRIATE, MAY GOD BLESS
 13 AMERICA AND THE FOUNDING FATHERS FOR THIS
 14 GREAT CONSTITUTION OF THE UNITED STATES
 15 OF AMERICA.

16
 17
 18 DATED: 02/05/2020

RESPECTFULLY SUBMITTED,

Michael J. Nissen

MICHAEL J. NISSEN

(DEFENDANT)



OFFICIAL SEAL

Birdie Jones

NOTARY PUBLIC-State of New Mexico

My Commission Expires 10-22-2023

Birdie Jones

EXHIBIT "A"

EXHIBIT "A", RELATES TO MOTION TO DISMISS INFORMATION OF ILLEGAL CONVICTIONS ON COUNTS I AND II FOR FEDERAL ABUSE OF ARBITRARY POWER AND JUDICIAL MISCONDUCT. ONE OR ALL, FORTY SEVEN POINTS OF AUTHORITY ARE HEREIN THE JURY TRIAL TRANSCRIPTS OF MINUTES. MICHAEL J. NISSEN, DEFENDANT, OR ATTORNEY, MR ROMERO, ASSISTANCE OF COUNSEL, WILL PRESENT THESE POINTS OF AUTHORITY TO THE COURTS UPON ORAL ARGUMENTS, IN DEFENDANTS DEFENSE OF THIS ILLEGAL ABUSE OF ARBITRARY POWER AND JUDICIAL MISCONDUCT OF JUDGE JAMES O' BROWNING'S VENUE.

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: 1:19-CR-00077-JB
6 MICHAEL NISSEN,
7 Defendant.

8
9
10 Transcript of Trial Proceedings before The
11 Honorable James O. Browning, United States District
12 Judge, Albuquerque, Bernalillo County, New Mexico,
13 commencing on August 6, 2019.

14 For the Plaintiff: Mr. Paul Mysliwicz
15 Mr. Alexander Uballez
16 For the Defendant: Mr. Kenneth Gleria
17 Mr. Jake Mkhitarian
18
19

20
21 Jennifer Bean, FAPR, RDR, CRR, RMR, CCR
22 Certified Realtime Reporter
23 United States Court Reporter
24 NM CCR #94
25 333 Lomas, Northwest
Albuquerque, New Mexico 87102

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

I N D E X

EXAMINATION OF JORDAN BURD

By Mr. Mysliwiec	30
By Mr. Mkhitarian	46
By Mr. Mysliwiec	56

EXAMINATION OF VICTORIA GURULE

By Mr. Mysliwiec	71
By Mr. Gleria	84
By Mr. Mysliwiec	94

EXAMINATION OF KENNETH P. LECESNE

By Mr. Uballez	98
By Mr. Mkhitarian	118
By Mr. Uballez	122

EXAMINATION OF STEVEN CARROLL

By Mr. Uballez	123
By Mr. Mkhitarian	131

EXAMINATION OF BARBARA BEUZEKOM

By Mr. Mysliwiec	134
By Mr. Mkhitarian	143

EXAMINATION OF JUAN CORDOVA

By Mr. Uballez	156
By Mr. Gleria	162
By Mr. Uballez	168

EXAMINATION OF PETER UBBELOHDE

By Mr. Mysliwiec	171
------------------	-----

REPORTER'S CERTIFICATE

181

SANTA FE OFFICE
 119 East Marcy, Suite 110
 Santa Fe, NM 87501
 (505) 989-4949
 FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
 PROFESSIONAL COURT
 REPORTING SERVICE

MAIN OFFICE
 201 Third NW, Suite 1630
 Albuquerque, NM 87102
 (505) 843-9494
 FAX (505) 843-9492
1-800-669-9492
 e-mail: info@litsupport.com

1 THE COURT: All right. Good morning,
2 everyone. I appreciate everybody being here on time
3 and ready to go. Let me call for trial United States
4 of America versus Michael Nissen, criminal matter
5 number 19-CR-00077. If counsel will enter their --
6 let me double-check and make sure that's the correct
7 number. It is.

8 All right. If people will enter their
9 appearances. For the Government.

10 MR. MYSLIWIEC: Paul Mysliwiec for the
11 United States. Good morning, Your Honor.

12 THE COURT: Mr. Mysliwiec, good morning to
13 you.

14 MR. UBALLEZ: Alex Uballez, also from the
15 United States. Good morning, Your Honor.

16 THE COURT: Mr. Uballez, good morning to
17 you.

18 And for the defendant.

19 MR. GLERIA: Good morning. Kenneth Gleria
20 and Jake Mkhitarian, and Mr. Nissen who is present
21 before the Court.

22 THE COURT: All right. Mr. Gleria,
23 Mr. Mkhitarian, and Mr. Nissen. Good morning to you.

24 All right. So Ms. Wright is handing out to
25 you the jury instructions that I worked over last

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 night and today. It's a rough set. It's being typed
 2 up so you'll get a clean one, but I thought I'd go
 3 ahead and give you the one that I put together. One
 4 thing that I pulled out -- and I probably need
 5 y'all's guidance on this, or thoughts. It did not
 6 seem to me that we ought to put the 404(b)
 7 instruction in here. The only thing I can think of
 8 is ~~another crime or wrong~~ would be the traffic
 9 citations, and it seemed to me those are so minor
 10 that it would not be a good idea, then, if the judge
 11 said, "You have heard evidence of Mr. Nissen's other
 12 crimes." I don't see how that helps you. So I'd be
 13 inclined to leave that out and just not have a
 14 404(b). I probably will be looking more to the
 15 defendant more on anything else. What's your
 16 thoughts, Mr. Gleria? It seemed to me it didn't help
 17 you; it kind of hurt you.

18 MR. GLERIA: I agree, especially after the
 19 hearing.

20 THE COURT: After the hearing.

21 MR. GLERIA: Yes, I'm in agreement.

22 THE COURT: All right. Is that all right
 23 with you, Mr. Mysliwiec?

24 MR. MYSLIWIEC: Yes, Your Honor. I defer
 25 to what the defendant wants on that.

SANTA FE OFFICE
 119 East Marcy, Suite 110
 Santa Fe, NM 87501
 (505) 989-4949
 FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
 PROFESSIONAL COURT
 REPORTING SERVICE

MAIN OFFICE
 201 Third NW, Suite 1630
 Albuquerque, NM 87102
 (505) 843-9494
 FAX (505) 843-9492
 1-800-669-9492
 e-mail: info@litsupport.com

*qpt 2015
 supreme
 out
 ending
 these are
 at crimes
 is wrong
 good and
 respect
 the law*

1 THE COURT: It's kind of like a limiting
2 instruction, and you're entitled to it. But if you
3 don't want it -- a lot of times defendants don't want
4 it and we don't give it.

5 MR. MYSLIWIEC: Yeah, I wouldn't even use
6 the word "crime." It's really an ~~infraction~~ or -- in
7 New York we have things that are in penal law but not
8 crimes. I know New Mexico is a little different.
9 But I agree. It draws unnecessary attention to a
10 thing that's mostly ~~res gestae~~, mostly, "You heard
11 this thing happened and that's what started the
12 story." But that doesn't need to be a jury
13 instruction.

14 (A discussion was held off the record.)

15 THE COURT: I'm trying to think if there is
16 anything else. I can't think of anything. I think
17 Ms. Bevel handed you out something. I think she's
18 given it to you and I don't have it, something to do
19 with the jury, a seating chart, or what --

20 MR. MYSLIWIEC: Yes, we have seating
21 charts.

22 THE COURT: So I guess they randomly pulled
23 the names, and you now have the seating chart. How
24 many are on there?

25 MR. MYSLIWIEC: The seating chart goes up

1 to 49. So we had some people that didn't show up,
2 which I'm sure is fine, but it looks like 49 showed
3 up.

4 THE COURT: That still seems to me like a
5 lot of people to work with in here. What would y'all
6 think if I left 3 down in the jury room and just had
7 46 in here? Because I just don't think we're going
8 to need all those people for such a short trial. It
9 doesn't have -- what do you think?

10 MR. MYSLIWIEC: Well, the defense gets ten
11 strikes, we get six, and we need 14 jurors. So...

12 THE COURT: You get 14 peremptory -- or 16
13 peremptory, we're going to seat 14, so that's 30.
14 You get two extra on the alternatives, so that gets
15 you up to 32. And then 33 -- I had one peremptory
16 challenge last week whenever I did the trial. So I
17 think you need at least 33, and I was going to seat
18 46 in here. Leave three. If something happens,
19 we'll bring them up. But I bet you we can get it
20 done, and just having those extra people is just
21 going to slow things down. What do you think?

22 MR. MYSLIWIEC: So if we have to call on
23 the extra three, we would have to basically start
24 jury selection over, but it seems like we have a
25 buffer of 13 or so that could be struck for cause but

1 we would still have enough, which seems like a lot of
2 strikes for cause.

3 THE COURT: It does seem like a lot of
4 strikes on a two-day trial, and this one doesn't have
5 sexual abuse or anything like that.

6 What do you think? Leave three down there,
7 Mr. Gleria?

8 MR. GLERIA: Yes, Your Honor. You know,
9 I'll defer to your judgment about that.

10 THE COURT: Let's leave 47, 48, 49. I
11 think that's more than enough. I might even could be
12 talked into leaving a few more down there.

13 All right. I think that's about all I can
14 think of to talk to you about. Mr. Mysliwicz?

15 MR. MYSLIWIEC: I have just two things from
16 the preliminary jury instructions, Your Honor.

17 THE COURT: Oh, yeah.

18 MR. MYSLIWIEC: One is that on page 2,
19 Mr. Uballes goes by Alex, so there's no need to do
20 full names, but I would say the Government is
21 represented by Assistant United States Attorneys Paul
22 Mysliwicz and Alex Uballes.

23 THE COURT: Okay.

24 MR. MYSLIWIEC: Then on the next page.

25 THE COURT: All right.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 MR. MYSLIWIEC: On the next page for the
2 first element of 875(c), it doesn't need to be
3 restricted to ~~police~~, because 875(c) doesn't restrict
4 the prohibition against interstate threats to any
5 specific profession. One of our two, you know,
6 quote, victims is a police officer. The other,
7 ~~Barbara Beuzekom~~, is -- I guess I would call her a
8 civilian employee of the New Mexico State Police.
9 There are some statutes where the official status of
10 the victim of the threat is important, like section
11 115 of Title 18. But 875(c) is not such a section.
12 I think we're overcomplicating our lives by putting
13 the word "police" in there. I'd just say:
14 "Mr. Nissen knowingly transmitted a communication
15 containing a threat to injure the ~~person~~ of another,"
16 which I think is what the pattern jury instruction
17 says.

18 THE COURT: We had talked about this
19 earlier and you had said put in police.

20 MR. MYSLIWIEC: That was before I saw the
21 pattern instruction. So 875(c) doesn't have a
22 pattern instruction in the original 2011 jury
23 instructions. It was added, I think, in the 2018
24 version, and Mr. Mkhitarian was kind enough to email
25 that to me. But when I made that suggestion I was

1 foolish to do so, because I wasn't working off a 2018
2 version.

3 THE COURT: "Injure the person of another."

4 Is that all right with you, Mr. Mkhitarian,
5 Mr. Gleria?

6 MR. MKHITARIAN: Yes, Your Honor, I
7 apologize. While I reviewed -- and I agree that that
8 is the language from the 2018 version. And I don't
9 think there is any instruction or anything that says,
10 "Insert person's name here." So I would agree with
11 the United States' assessment that "injure the person
12 of another" would be the --

13 THE COURT: Do you have any other changes,
14 Mr. Mysliwicz?

15 MR. MYSLIWIEC: No, sir. Those are my only
16 two notes.

17 THE COURT: Mr. Mkhitarian, did you have
18 anything on the preliminary instruction?

19 MR. MKHITARIAN: No, Your Honor.

20 THE COURT: All right. So I'm going to
21 give those to Ms. Desai and ask her to make those
22 changes, and she'll give you another one. Why don't
23 we file those as well. We probably ought to file the
24 other set.

25 You said you had another issue,

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Mr. Mysliwiec?

2 MR. MYSLIWIEC: That was it, sir.

3 Mr. Uballez' first name being Alex, and then that
4 first element of 875(c). That's all I have.

5 THE COURT: I've got a brother-in-law named
6 Max, so I must have had Max on my mind.

7 MR. MYSLIWIEC: Max is one of his names.

8 Oh, the next thing is, we're going to
9 strike Task Force Officer Wesley Cox from our witness
10 list, which will make him immune to the rule of
11 sequestration. He'll be able to stay in the pews and
12 go back and grab witnesses and help coordinate.

13 As I mentioned before, Peter Ubbelohde of
14 the FBI is our case agent, so he's immune to the rule
15 for that reason and sits at the table with us.

16 Task Force Officer Cox is just going to be
17 out in the audience like a regular person. But we're
18 taking him off our witness list so that he will be
19 able to stay in the courtroom, hear other witnesses'
20 testimony, fetch other witnesses, fetch exhibits,
21 things like that.

22 THE COURT: You don't have any need to call
23 Officer Cox, do you, Mr. Gleria?

24 MR. GLERIA: No, Your Honor.

25 THE COURT: All right. So he can remain in

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 the courtroom.

2 I may have asked this at the pretrial
3 hearing. Did anybody have any issues with each
4 other's voir dire? Mr. Mysliwicz, with the
5 defendant?

6 MR. MYSLIWIEC: So his very last question
7 puts the jury in the position of the defendant, which
8 one is not supposed to do. I mean, as I recall the
9 rule, the defense is not supposed to ask the jury to
10 put themselves in the position of the defendant. The
11 Government is not supposed to ask the jury to put
12 themselves in the position of the victim. But that's
13 really the only thing I saw that I wasn't 100%
14 comfortable with. I don't expect it will be a big
15 scandal, but that's all I noticed.

16 THE COURT: Well, I hear that asked all the
17 time. It's kind of borderline. But I'll let
18 defendant ask it if they want. It may pick up
19 something that we need to discuss, so you just never
20 know. They may look at him and don't like his
21 haircut or not wearing a jacket. You just never
22 know. So I'll kind of give the defendant the leeway
23 to ask that question if they want it.

24 Is that all you have on their voir dire,
25 Mr. Mysliwicz?

*ask what
?
reference
this
please.*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 MR. MYSLIWIEC: Yes, thank you, Your Honor.

2 THE COURT: Mr. Gleria, Mr. Mkhitarian, do
3 you have any issues with the Government's --

4 MR. GLERIA: No, I don't, Your Honor.

5 THE COURT: Well, do y'all have any issues?
6 Did you have any other issues, Mr. Mysliwiec, we need
7 to address before we bring the jury in?

8 MR. MYSLIWIEC: It doesn't need to be now.
9 I did want to bring in some more specifics about the
10 testimony that I would be able to adduce about the
11 revolver if I were able to ask about that.

12 Specifically, when I was in preparation with Officer
13 ~~Cash~~, he is the one who interviewed Mr. Nissen, and
14 he has a relationship with Mr. Nissen. They've
15 talked many times, and he asked Mr. Nissen
16 essentially, "Do you still carry that revolver?"
17 Mr. Nissen said something to the effect of, "Yes, I
18 carry it regularly or I always carry it."

19 And Mr. Nissen -- that was the interview in
20 which Mr. Nissen specified that it was a Smith and
21 Wesson and specified that he carried it to protect
22 himself from rogue state cops. And from Mr. Cash's
23 conversations with Mr. Nissen, Mr. Cash believes that
24 by the phrase "rogue state cops" Mr. Nissen means
25 police officers who, in Mr. Nissen's view, violate

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

once
you
go on
the
Rio
Grande
River
when
Defendant
was
hunting
birds
legally

Defendant
Does not
agree
with
this
Hearsay
conspiracy

1 Mr. Nissen's rights. And Mr. Cash's view is that
2 Mr. Nissen would agree with that definition.

3 The United States continues to take the
4 position that when it goes to Mr. Nissen's subjective
5 intent to convey a true threat in that third phone
6 call on November 2, 2018, when he said, "If a police
7 officer violates my rights again, I'm going to pull
8 out my revolver," that it's very relevant that he
9 possessed a revolver to which he was likely referring
10 when he said that. And like I said before, I don't
11 think the ownership of a revolver, especially in New
12 Mexico, is itself prejudicial. It's not illegal.
13 We're not claiming that it's illegal. We talked
14 about the 404(b) instruction being not particularly
15 appropriate in this circumstance. We don't claim
16 it's wrongful to possess the revolver. We just think
17 it's important that the jury know that at the moment
18 he threatened to pull out his revolver, he did indeed
19 possess one.

20 So if that's a request to reconsider,
21 however the Court wants to take that, that's the last
22 thing I have.

23 THE COURT: Okay. Any thoughts on that,
24 Mr. Gleria, Mr. Mkhitarian?

25 MR. GLERIA: I agree with the previous

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 rulings of the Court regarding the parameters of the
2 questioning, and I object to that proposed line of
3 questioning as extrinsic evidence that is not
4 relevant. And that's my position.

5 THE COURT: Well, I'll give it some
6 thought, but I'm inclined -- I worked on this over
7 the weekend. I still need to finish up the opinion,
8 just a few more pages I need to edit, and I just ran
9 out of time and started working on jury instructions,
10 just in case this case moves quickly, which it might.
11 So I wanted to get you a set of those, so I kind of
12 stopped working on the opinion and went back to the
13 other. But I'll take a look at it.

14 But right at the moment, let's keep the
15 actual existence of the revolver out. It's going to
16 come in to some degree in the telephone calls, but
17 keep out the other evidence, and I'll continue to
18 think about it.

19 All right. Anything else, Mr. Mysliwiec --

20 MR. MYSLIWIEC: No, sir.

21 THE COURT: -- before we bring the jury in.
22 Mr. Mkhitarian? Mr. Gleria?

23 MR. MKHITARIAN: There is only one issue to
24 one of the jurors. I recognize one of the names as
25 somebody whose son or brother I might have

1 represented, Ms. Linda Arbuckle. So I just noted
2 that on my juror questionnaire. So that's the only
3 thing I have.

4 THE COURT: Any thoughts on that,
5 Mr. Mysliwiec?

6 MR. MYSLIWIEC: Part of the Court's regular
7 questioning is: "Do you recognize any of these
8 folks?" If it is Mr. Mkhitarian, maybe she
9 recognizes him. And I think Mr. Mkhitarian is a fine
10 attorney. So if what she says is, "Yes, he
11 represented me and he's a fine attorney," that's not
12 scandalous or untrue. So I think we just see how it
13 lies as we go through the regular process.

14 THE COURT: Is that all right with you,
15 Mr. Mkhitarian?

16 MR. MKHITARIAN: That's all right. Just
17 full disclosure to the Court.

18 THE COURT: I appreciate it.

19 Ms. Bevel, I think we agreed -- why don't
20 we just leave those bottom three.

21 THE CLERK: I told them, and Judge, I just
22 got a message from jury that they finished
23 orientation and the jurors are on a quick bathroom
24 break, and they're ready to bring them up.

25 THE COURT: Anything else, Mr. Mkhitarian,

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Mr. Gleria?

2 MR. GLERIA: No, Your Honor.

3 THE COURT: All right. They're going to
4 bring the jurors up. They're on their bathroom
5 break. If y'all want to go in there and use the jury
6 room, there are a couple of toilets in there, and
7 then we'll get them up here and we'll get ready.

8 So we'll go in recess for a few minutes
9 here while we're getting the jury up here.

10 (~~The~~ Court stood in recess.)

11 (Voir dire was conducted and the jury was
12 selected.)

13 THE COURT: The lady that's got to breast
14 pump for her baby made the jury. So would it be all
15 right with y'all -- I think the Government is taking
16 one of the witness rooms out front. Could I have the
17 other one? Do you need it, Mr. Gleria?

18 MR. GLERIA: The witness room?

19 THE COURT: Yeah, the witness room out
20 front, the two conference rooms.

21 MR. GLERIA: No.

22 THE COURT: I'm going to mark one of those
23 as, "Private. Do not enter." So if you all do not
24 enter that one, that's where she'll do it. She's
25 okay right at the moment, but --

1 MR. MYSLIWIEC: All right. So the one
2 marked "Private" we're not going to use. Okay. The
3 agents know.

4 THE COURT: And then I've got one juror
5 that's looking for eyeglasses, so we're waiting for
6 her to come up. She's down in the jury assembly room
7 looking for her glasses. But as soon as I get her up
8 there, we'll get started.

9 Are there any issues we need to discuss
10 before we bring the jury in?

11 MR. MYSLIWIEC: So I was looking at the
12 final instructions.

13 THE COURT: Yes.

14 MR. MYSLIWIEC: And I just have the same
15 request that we change "police" back to the pattern.

16 THE COURT: Ms. Desai, would you change --
17 on the elements, take out "police" and put whatever I
18 put into the preliminary instruction.

19 MR. MYSLIWIEC: And that's all I could
20 notice.

21 THE COURT: I'm going to put in -- I didn't
22 do it last night. I'm going to put in an instruction
23 on knowingly, since that's one of the elements. So
24 I'll put in the first sentence of the pattern
25 instruction. The rest of it deals with the

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 deliberate ignorance. So I'll take all that out. I
 2 don't think this case has anything to do with
 3 deliberate ignorance. So I will just have the first
 4 sentence of that pattern instruction. I will insert
 5 it behind the elements charge and before the "on or
 6 about" charge.

7 So we've got all the jurors, all 14 of
 8 them?

9 THE CLERK: Yes, Your Honor.

10 THE COURT: Anything else we need to
 11 discuss? Mr. Mysliwicz?

12 MR. MYSLIWIEC: No, sir.

13 THE COURT: How about you, Mr. Gleria?

14 MR. GLERIA: No, Your Honor.

15 THE COURT: It's up to y'all. Do y'all
 16 want to stand for the jury, or just go back to
 17 regular protocol, given that we don't have any
 18 jurors --

19 MR. GLERIA: Leave it to you, Judge.

20 MR. MYSLIWIEC: It's y'all's call as long
 21 as Mr. Nissen doesn't mind.

22 THE COURT: Well, he can stand too, I
 23 think. He's okay.

24 MR. GLERIA: The chains might jangle.

25 THE COURT: Well, I think they got it

SANTA FE OFFICE
 119 East Marcy, Suite 110
 Santa Fe, NM 87501
 (505) 989-4949
 FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
 PROFESSIONAL COURT
 REPORTING SERVICE

MAIN OFFICE
 201 Third NW, Suite 1630
 Albuquerque, NM 87102
 (505) 843-9494
 FAX (505) 843-9492
 1-800-669-9492
 e-mail: info@litsupport.com

we were
 instructed
 to do
 and at all
 violations
 of the
 Press
 Equal
 Protection
 Clause
 - the law
 his creates
 reluctance
 against
 the
 speech

1 pretty tight. Mr. Nissen, do you mind standing and
2 let's listen to you?

3 THE DEFENDANT: I think we should just stay
4 the way it's been.

5 THE COURT: If it's all right with y'all,
6 I'll just say, **"Stand,"** for the audience and for my
7 clerks, **and y'all don't stand.**

8 MR. MYSLIWIEC: Yes, sir. Correct.

9 THE COURT: Is that okay? Is that all
10 right with you, Mr. Nissen, Mr. Gleria?

11 THE DEFENDANT: Yes.

12 MR. GLERIA: Yes, sir.

13 THE CLERK: They're lining up, Judge, and
14 I've already passed out the note pads.

15 THE COURT: Okay. Oh, does anybody want to
16 invoke the rule?

17 MR. GLERIA: Yes, I'll invoke the rule.

18 THE COURT: So I'll instruct the jury on
19 the rule when they come in. I may ask on the record,
20 "Is it invoked" --

21 MR. GLERIA: Yes, sir.

22 THE COURT: -- and you can say it is. Then
23 I'll give them the rule.

24 So on instruction number 6, the fifth line,
25 it had comma after "witnesses." What it has in the

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 tenth instruction is that says "including the
2 defendant." So it assumes that the defendant is
3 testifying. Since it doesn't seem that's the way
4 it's going, I took that clause out. But the comma
5 didn't come out, so I'm going to take the comma out
6 unless anybody has any objection to it.

7 MR. GLERIA: No, Your Honor.

8 MR. MYSLIWIEC: No, sir, thank you.

9 (The jury entered the courtroom.)

10 THE COURT: All right. Does either side
11 wish to have the rule invoked in this case?
12 Mr. Mysliwiec? Mr. Gleria.

13 MR. GLERIA: Yes, Your Honor.

14 THE COURT: All right. It is a rule of
15 law -- the rule has been invoked in this case, and
16 it's a rule of law that witnesses may be excluded
17 from the courtroom so that they cannot hear the
18 testimony of other witnesses. This rule does not
19 apply to parties or expert witnesses. The rule of
20 exclusion has been invoked in this case, and all
21 witnesses to whom the rule applies will be required
22 to remain outside of the courtroom until they are
23 called to testify. Witnesses excluded from the
24 courtroom should not discuss with other witnesses
25 their testimony before they or the other witnesses

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 testify, but they may discuss their testimony with
2 the lawyers.

3 All right, Mr. Uballez, do you have an
4 opening statement for the Government?

5 MR. UBALLEZ: Yes, Your Honor.

6 THE COURT: Mr. Uballez.

7 MR. UBALLEZ: May it please the Court.

8 THE COURT: Mr. Uballez.

9 MR. UBALLEZ: Counsel, ladies and
10 gentlemen, good afternoon. Thanks for hanging with
11 us. We will present hopefully a short case over the
12 course of today and tomorrow that's going to involve
13 the incidents -- two incidents that occurred or a
14 series of incidents that occurred in November of
15 2018, last year.

16 They began November 2 of 2018 where New
17 Mexico State Police Officer Jason Burd was doing his
18 job. At that time, what his job involved was driving
19 on the freeways, checking for traffic infractions.
20 He was westbound on I-40 in the Moriarty area when he
21 came across Mr. Nissen's vehicle.

22 Now, running the vehicle through his
23 system, he found that the vehicle itself had not been
24 registered. It had actually expired in May of 2018.
25 So as part of his job, he pulls him over and

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 approaches.

2 As he does in every other traffic stop, he
3 approaches him, the driver. He asks for proof of a
4 driver's license, insurance, registration.
5 Mr. Nissen hands him an ID, New Mexico ID, and does
6 not give him a driver's license. Officer Burd
7 notices a shotgun in the vehicle and takes it for his
8 safety, takes the ID, goes back to his vehicle, runs
9 it. He calls dispatch, which means he calls in the
10 name of Mr. Nissen and identifiers. Dispatch says,
11 "No, no, he's got a driver's license. You have an
12 ID, but he's got a valid driver's license," but
13 confirms other things that he pulled over Mr. Nissen
14 for.

15 So he goes back. Instead of arresting or
16 towing Mr. Nissen's vehicle, he issues him two
17 citations for lack of current registration and lack
18 of proof of insurance and returns the shotgun to him,
19 and he goes on his way.

20 Very soon after that interaction, which was
21 about 5:45 in the afternoon, New Mexico State
22 dispatch receives a call. That call, as you will
23 hear, goes through -- as well as the calls that
24 follow go through a switch, which you'll hear some
25 information about. The switch is TTAS 005. It's in

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

Why was
ticket
issued 2
weeks later
for shotgun
filing
Husc &
16-126
regulate
minutes
passed
three

1 Plano, Texas. This is what satisfies the final
2 elements of the charge that you'll be evaluating,
3 which is a cellphone call was made and headed to a
4 switch outside of the state.

5 This call was made by Mr. Nissen. Victoria
6 Gurule at New Mexico State Police takes that call.
7 She, in fact, is already familiar with Mr. Nissen
8 because she was the dispatcher who was on the other
9 end of the line when Officer Burd called in that he
10 was at a traffic stop. She had already run
11 Mr. Nissen's information.

12 When Mr. Nissen gets on the line in his
13 first call, he educates her on some aspects of the
14 law. Ms. Gurule, as you'll hear, says that -- knows
15 which officer Mr. Nissen is talking about, says,
16 "I'll refer your information over to the officer,"
17 and that answer does not satisfy Mr. Nissen. He
18 hangs up, only to call back shortly later. In about
19 30 minutes he calls Ms. Gurule again and she answers.

20 (Audio played.)

21 MR. UBALLEZ: My apologies. This is the
22 call I was going to play.

23 (Audio played.)

24 MR. UBALLEZ: Following this call,
25 Ms. Gurule refers Mr. Nissen to her sergeant, Steve

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Carroll, who speaks with Mr. Nissen and attempts to
2 defuse the situation and is unsuccessful.

3 Mr. Nissen then calls back minutes later,
4 in the first call that I played for you, yelling at
5 Victoria not to threaten him.

6 On November 26 of 2018, nearly a month
7 later, still simmering, Mr. Nissen again calls New
8 Mexico State Police dispatch, this time talking to
9 Barbara Beuzekom. After educating Ms. Beuzekom on
10 the law and speaking with her about speaking to her
11 superiors, he issues two statements to her. "You
12 need to mind your own fucking business," he states,
13 "and I'm going to come and shoot you in your fucking
14 head."

15 Barbara transfers Mr. Nissen to Julian
16 Cordova, a state police officer, who records this
17 conversation with Mr. Nissen, during which time
18 Mr. Nissen continues to express his displeasure.

19 Those are the facts of the case. And as
20 the Judge told you, your job here is to apply the law
21 to those facts. We will not ask you to convict
22 Mr. Nissen for profane or offensive language, which
23 is obviously present. We will ask you to convict
24 Mr. Nissen for the threats in between those lines,
25 for stating that he will take his revolver out and

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

was
stated
well.
t no
y no charge?
here is
is 505-841
peel call?
all calls as
see her
e taped.
set not
this one
Different
statements
discovery
with fourth
n stand
not, there
fishy?

*A jig
an animal
motherfucker
is not a
person or
name.*

1 put that, as he said, "motherfucker, drop dead."

2 This is a simple case from which you can
3 redact every one of those offensive statements and
4 still find that he's guilty. Thank you.

5 THE COURT: Thank you, Mr. Uballez.

6 Mr. Gleria, do you have an opening
7 statement for Mr. Nissen?

8 MR. GLERIA: Yes, Your Honor.

9 THE COURT: Mr. Gleria.

10 MR. GLERIA: Thank you, Your Honor. May I
11 please move the podium? It's too close to the Elmo.

12 THE COURT: You may.

13 MR. GLERIA: Ladies and gentlemen, you
14 heard Judge Browning speak about our democratic
15 system, and we have the right in our country of free
16 speech, and that right is enshrined in the First
17 Amendment of the United States Constitution. And
18 just as Mr. Uballez stated, it can be profane; it can
19 be offensive. It doesn't have to be correct. It can
20 be hate speech. It's protected. Today you as the
21 jurors have the power to determine the facts of this
22 case and to determine if Mr. Nissen crossed the line.

23 The Government is focusing on the words it
24 claims are the threats, threats that -- statements
25 that they claim show that these statements by

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Mr. Nissen are serious and, therefore, intended by
2 him as threats. However, the evidence is the
3 entirety of Mr. Nissen's recorded statements.
4 Mr. Nissen called police dispatch to educate police
5 regarding the traffic stop and for having stopped
6 him, in his words, for no good reason; and also to
7 complain about his feelings that his constitutional
8 rights were violated.

9 Mr. Nissen's statements are profane and
10 Mr. Nissen's statements include figurative language.
11 When he says "pigs," "You've got some of the
12 stupidest fucking pigs on the road," that is
13 figurative language. Now, it's obviously offensive,
14 but it's figurative and, therefore, not literal, and
15 clearly exaggerated. And that defines exaggeration,
16 because he is overtly using exaggerated language to
17 express his unhappiness. Mr. Nissen is ranting about
18 his unhappiness for being stopped on the highway, for
19 his perception, whether he's right or wrong, that his
20 constitutional rights were violated for having been
21 issued citations for no insurance and no
22 registration.

23 The evidence is significant also for what
24 it does not show. It does not show any act in
25 furtherance of alleged threats. It's important for

1 me to emphasize that the statements are figurative,
2 ~~"pigs"~~ and therefore exaggerated and not literal.
3 Not literal.

4 This occurred over the telephone.
5 Mr. Nissen is somewhere on the telephone, driving or
6 stationary. Who knows? But he's nowhere near a
7 police dispatch.

8 He didn't make further statements such as,
9 "I'll be right there to put a bullet dead on that
10 pig's head." He didn't say that. And it's clearly
11 ranting because it occurred at the end of his
12 statements to dispatch. The statements, at least the
13 first one that you heard, is conditional on a future
14 stop and violation of his rights by law enforcement,
15 something that did not occur.

16 The police are sensitive to security, as
17 they should be, and I understand that all such
18 statements should be looked into and taken seriously.
19 But when you look at the context of those statements,
20 these are words, words without any accompanying act
21 in furtherance of what they claim are threats.

22 **Mr. Nissen is ranting.** He has a right to be upset.
23 He has a right to call dispatch to complain. He
24 has -- you know, it's not very nice to use such
25 profanity and to raise his voice. But these are

*I have a
right to
petition
the government
in a redress
of grievances*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 words unaccompanied by any act and, therefore, not a
2 crime. He has the right to say it.

3 Mr. Uballez also touched upon the November
4 26 alleged threat directly to a New Mexico State
5 civilian employee, which you heard about. What's
6 striking about that particular allegation is that
7 you're going to have to hear from the witness. And
8 Mr. Nissen's statement is not in evidence. It's not
9 in evidence like the other statements. The other
10 statements, you'll be able to listen to them here in
11 court. The other statement is not in evidence.

12 Mr. Nissen never threatened Victoria Gurule when he
13 called the initial two or three times. He was
14 complaining, and he said that if he was stopped and
15 his rights were violated again, he would take some
16 kind of action. It's unthinkable that a call by a
17 person to police dispatch wouldn't be recorded. And
18 it's not recorded because it never happened. Every
19 call to a police dispatch is recorded. It didn't
20 happen. Mr. Nissen did not threaten that civilian
21 police employee. His statements to Victoria Gurule
22 were never a threat to her. He was complaining about
23 his rights, and now the Government is saying in the
24 second instance, when the call is not even in
25 evidence for you to hear, suddenly now he's shifting

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 from complaining about police to directly threatening
2 the civilian police employee. It didn't happen. The
3 only evidence that you have is her testimony about
4 it. You don't have the dispatch call yourself to
5 hear, which is unthinkable, because every single call
6 is recorded. **Every** single call.

7 How is it that the call is not recorded?
8 And now this lady can say -- this testimony is going
9 to be that he directly threatened her. It didn't
10 happen. These are words. Nobody wants to be -- you
11 know, nobody wants to be swore at; nobody wants to
12 be yelled at. But his speech is protected. They
13 were not threats. There was not a single act in
14 furtherance of these activities. **They** were
15 conditioned on a future stop and violation of rights
16 by law enforcement which did not occur.

17 And they were also separated by time and
18 space. Mr. Nissen was on the road. The dispatch is
19 in a different place. The police were not even
20 named. It's not a threat. It's words. Thank you.

21 THE COURT: Thank you, Mr. Gleria.

22 MR. GLERIA: You're welcome.

23 THE COURT: All right. Does the Government
24 have its first witness or evidence, Mr. Mysliwicz?

25 MR. MYSLIWIEC: We do, Your Honor. The

*True threat
Definitive
clearly
says
contingency*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 United States would like to call Officer Burd of the
2 New Mexico State Police.

3 THE COURT: Mr. Burd, if you'll come up and
4 stand next to the witness box on my right, your left,
5 before you're seated, my courtroom deputy, Ms. Bevel,
6 will swear you in.

7 MR. MYSLIWIEC: And you can leave your
8 computer on the table.

9 JORDAN BURD,
10 after having been first duly sworn under oath,
11 was questioned, and testified as follows:

12 THE CLERK: Please be seated.

13 THE COURT: Mr. Burd, Mr. Mysliwiec.

14 DIRECT EXAMINATION

15 BY MR. MYSLIWIEC:

16 Q. Officer, could you please introduce
17 yourself to the jury by telling them your full name,
18 occupation, and current assignment?

19 A. I'm Officer Jordan Burd with the New Mexico
20 State Police. I've been with the New Mexico State
21 Police for about five and a half years now, and I'm
22 currently assigned to the Albuquerque District 5
23 area, as well as the subdistrict Edgewood area.

24 Q. What is the Albuquerque District 5 area?

25 A. It covers the areas of Los Lunas,

1 Albuquerque, Cuba, as well as the East Mountains,
2 Edgewood area.

3 Q. Is that the assignment that you had back on
4 November 2, 2018?

5 A. It is, sir.

6 Q. And does that cover Moriarty?

7 A. It does, sir.

8 Q. And is Moriarty east of Albuquerque?

9 A. It is, sir.

10 Q. Did you have any other jobs before your job
11 as a patrol officer with the New Mexico State Police?

12 A. I did not, sir.

13 Q. So do you remember whether you were on duty
14 on November 2 of 2018?

15 A. I was, sir.

16 Q. What was your shift?

17 A. I was on night shift, which I believe at
18 the time was 4:00 p.m. to 1:00 a.m. in the morning.

19 Q. And were you on foot or in a patrol car?

20 A. I was in a fully marked patrol unit.

21 Q. And were you, yourself, in uniform?

22 A. Full uniform displaying my New Mexico State
23 Police badge of office.

24 Q. And do you remember whether you effected
25 any traffic stops during that evening shift on

1 November 2, 2018?

2 A. I did, sir.

3 Q. And just one, or more than one?

4 A. Several.

5 Q. Were any of those stops involving Michael
6 Nissen?

7 A. It was, sir.

8 Q. At the time that you originally made the
traffic stop, did you know that the driver of the
vehicle was Michael Nissen?

9 A. Not at all, sir.

10 Q. What caused you to initiate that traffic
11 stop of the person you later learned was Michael
12 Nissen?

13 A. On that day, sir, I ran a vehicle
14 registration through my LEADS computer system, and it
15 notified me that that vehicle had expired
16 registration as well as no active insurance.

17 Q. And it's normal for you to run vehicle
18 information that you see as you're patrolling?

19 A. Standard patrol operation, sir.

20 Q. And as far as you know, that's not against
21 any rule?

22 A. Not at all, sir.

23 Q. And when you ran this information of the
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

*o collateral
stuck to
check Proactive
s asked for
of defendant.*
*015 S. G.
ing Sept.*
*o cond
mud, right
to travel
merget other
0 Drivers license
needed along
with contraband
guernments as
plates and
Insurance*

1 truck that later turned out to be Mr. Nissen's, you
2 were traveling westbound on Interstate 40 towards
3 Albuquerque?

4 A. Yes, sir. Just, I believe, outside the
5 city limits of Moriarty westbound.

6 Q. So definitely within the state of New
7 Mexico?

8 A. Yes, sir.

9 Q. When you learned that -- your computer told
10 you that he had no current registration or insurance,
11 what did you do next?

12 A. The next thing I did is, I engaged my
13 emergency equipment, called out the traffic stop
14 through my dispatch, who then repeated the vehicle
15 registration, coming back with expired registration
16 and no active insurance.

17 Q. So when you typed in the information to
18 check in your computer system, that wasn't the time
19 that you asked dispatch to double-check for you?

20 A. Can you rephrase that? I'm sorry.

21 Q. So what you've described is that you
22 originally ran the information that you saw with your
23 eyes, and your computer told you that the vehicle had
24 expired registration and no insurance. When you
25 called the stop in to dispatch and you say they

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 confirmed, is that like double-checking?

2 A. It is, because dispatch runs it on their
3 end as well, sir.

4 Q. And you do that so you make sure you don't
5 pull over people for no reason?

6 A. It double-confirms that they saw the same
7 thing I saw.

8 Q. And did the truck that you later learned
9 was driven by Mr. Nissen pull over in a timely
10 fashion?

11 A. It did, sir.

12 Q. When you approach a vehicle on the highway,
when you're doing this traffic stop, do you approach
on the driver's side in the middle of the traffic, or
on the passenger side on the shoulder?

13 A. Always on the passenger side, sir, for
14 officer safety.

15 Q. And is that what you did here?

16 A. Yes, sir.

17 Q. And while you were walking up to the truck
18 that you later realized Michael Nissen was driving,
19 did you see anything that caught your attention?

20 A. The first thing I did, sir, is, I
21 introduced myself as Officer Burd of the New Mexico
22 State Police. I notified the driver the reason for
23
24
25

film of
state cruiser
which is later
not possible
to object to
his franchised
statement.
film shows
the truck
approaching
the driver's side
the front
passenger
side.

*I told him
it was there
so he wouldn't
shoot me.*

*Felon from
cruiser shows
the truth.
lack of other
driving evidence
to offset this
frankulent
statement.*

*Shotgun?
what does that
have to do
with anything?*

the stop today, and I immediately observed, I believe, a green or a camouflage-in-color shotgun in his passenger side seat.

MR. MYSLIWIEC: Your Honor, may I move about the well?

THE COURT: You may.

BY MR. MYSLIWIEC:

Q. I'm going to show you a ~~shotgun~~ that is in evidence.

MR. MYSLIWIEC: Is it 8, Alex?

Q. And it's zip-tied into this box for safety. But can you tell me whether this shotgun here resembles what you saw in Michael Nissen's truck?

THE COURT: I'm not sure that we've moved exhibits, but is there any objection to this one?

MR. GLERIA: No, Your Honor.

THE COURT: All right. So what is the number on it?

THE CLERK: Nine.

MR. MYSLIWIEC: Nine. And I thought we had a talk about the preadmission of exhibits not objected to.

THE COURT: Well, is that all right, the ones that are on the exhibit list, document 60, any objection to any of those?

1 MR. GLERIA: No, Your Honor.

2 THE COURT: All right. So Government's
3 Exhibits 1, 2, 3, 4, 5, 6, 7, 8 and 9 will be
4 admitted into evidence.

5 MR. MYSLIWIEC: And demonstrative exhibits
6 1-A, 2-A, 3-A, and 4-A, the transcripts?

7 THE COURT: Any objection to those?

8 MR. GLERIA: No, Your Honor.

9 THE COURT: All right. Government's
10 ~~demonstrative exhibits~~ -- are they going to be
11 admitted into evidence or just used as demonstrative
12 exhibits as we have with the jury instruction?

13 MR. MYSLIWIEC: We put them on the JERS
14 disc, but they're demonstrative.

15 THE COURT: Do you care if -- they can go
16 either way. We can make them exhibits for the jury,
17 or we can just make the audio the exhibit and the
18 transcripts can be demonstratives.

19 MR. GLERIA: I prefer --

20 THE COURT: You prefer the latter?

21 MR. MYSLIWIEC: That's what the instruction
22 says.

23 THE COURT: Yeah. Are you okay with that?

24 MR. MYSLIWIEC: Yes, sir.

25 THE COURT: So we'll admit -- well, the

*There were
line that
Gleria didn't
bring forth
- questioning
prosecution
to object
to this?*

1 transcripts will just be demonstratives, then.

2 MR. MYSLIWIEC: Yes, sir.

3 THE COURT: All right. So I don't need to
4 admit those.

5 MR. MYSLIWIEC: Yes, sir.

6 BY MR. MYSLIWIEC:

7 Q. So I might have lost my place. But Officer
8 Burd, can you confirm that this shotgun I'm holding
9 right now, Government's Exhibit 9, as far as you can
10 tell is the same shotgun that you saw on the
11 passenger seat of Mr. Nissen's truck when you
12 encountered him?

13 A. It is, sir.

14 Q. And you can confirm this is not a water
15 balloon?

16 A. I can confirm that, sir.

17 Q. So after you introduced yourself to
18 Mr. Nissen and told him the reason for the stop, did
19 he respond at all to you?

20 A. He did, sir.

21 Q. And how did he respond to you?

22 A. He responded by basically saying that I had
23 no legal authority to be stopping his vehicle; that
24 he identified himself as, I believe the word he used,
25 as a ~~traveler~~. He stated at this moment in time he

*S. Ct. ruling
of Sept. 18, 2015
I wasn't working
for money.*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 was traveling, and again, I did not have the legal
2 authority nor the means to apply traffic laws to him,
3 that they did not apply to him because he was a
4 traveler, and everything basically I was doing was
5 illegal.

6 Q. Before he said those words to you, have you
7 had any training on the existence of folks who
8 believe those things?

9 A. We've had prior training as well as prior
10 experiences in my law enforcement career. Typically,
11 I would say anyone that might possibly identify
12 themselves as a traveler may apply themselves to a
13 specific group of people who don't -- believe that
14 our specific state or county laws don't apply, and
15 believe that -- I believe he kept quoting the
16 Constitution.

17 Q. And do you have training in how to make
18 sure that encounters with folks like that don't get
19 more hectic than is necessary?

20 A. Yes, sir. Basically to just stick to the
21 standard patrol operations, not to delve into any
22 arguments of the law, but rather, just stay
23 straightforward and enforce the legal state law.

24 Q. So after he revealed those beliefs to you,
25 what did you do next?

*gain Sept
15 J. CT
making
about this
subject.
leia did
not do as
asked.*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. I again requested again for his license as
2 well as vehicle information. Again, it was several
3 minutes of riff-raff about my legal authority to be
4 stopping -- to have the legal authority to stop his
5 vehicle. Eventually he did provide me with his New
6 Mexico identification card. He didn't provide any
7 other vehicle information.

8 At this point I found for my safety I was
9 going to remove that shotgun out of his vehicle. I
10 did. I reached in and removed the shotgun from the
11 vehicle. I believe I told him, "This will be
12 returned to you at the conclusion of this stop, but
13 for my safety it's not going to be in your presence."

14 Q. And did he respond to that in any way?

15 A. He did. He began to raise his voice. His
16 face, I believe, got a little redder. He was stating
17 I didn't have the legal authority to de-arm him, I
18 believe was the word he used, and it was -- my
19 feelings were, he was pretty agitated with that
20 situation.

21 Q. What did you do after temporarily taking
22 custody of that firearm and informing him of why you
23 did it?

24 A. At this point, that's when I went back to
25 my patrol unit. I secured the shotgun there

*Film of
Police cruiser
never materialized
asked requested
by defendant
of K. S. Lewis
to provide
for witnesses.
2nd and
4th amendment
constitutional
violations*

1 momentarily while I ran his driver's license -- or
2 his identification information. His driver's license
3 came back valid in the state of New Mexico, so he
4 did --

5 Q. When you say the driver's license came back
6 valid, is that from your typing into your own
7 computer, or did you call that in to dispatch and
8 dispatch told you?

9 A. I typed that into my computer, sir.

10 Q. And were you communicating with dispatch
11 during this process?

12 A. I was.

13 Q. Do you know who at dispatch you were
14 communicating with during this?

15 A. No, I don't, off the top of my head, sir.

16 Q. Do you know who Victoria Gurule is?

17 A. I'm familiar with her.

18 Q. Do you know if she was on duty at the time?

19 A. I believe she was.

20 Q. After you ran your computer checks, were
21 you able to confirm whether his vehicle had insurance
22 or not?

23 A. Sorry, can you rephrase?

24 Q. Did you confirm whether his vehicle had
25 insurance or not?

1 A. It did not have insurance, sir.

2 Q. Not just proof of insurance, but actually
3 whether it had insurance.

4 A. Both, sir. He didn't provide me with any
5 vehicle information during our encounter, and
6 confirmed, when I went back through my computer and
7 dispatch, the vehicle was not insured.

8 Q. And what about the registration status; do
9 you remember?

10 A. It had been expired for, I believe, over
11 six months.

12 Q. Now, at that time, knowing those things and
13 confirming them through the process you've described
14 to us, did you have the authority to arrest him and
15 tow his vehicle?

16 A. I would have had the authority to arrest
17 him if he refused to sign my citations. I did have
18 the authority to tow his vehicle, though.

19 Q. So you could have made him walk home from
20 I-40?

A. I could have.

Q. Did you?

A. I did not.

Q. What did you do instead?

A. At this point I issued him two traffic

*Discovery
says otherwise
and the record
the ticket is
there to show
this.
again Gloria
didn't do as
Defendant
requested
to amend
violation*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 20-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 citations, one for expired registration, as well as
2 no proof of vehicle insurance; our financial
3 responsibility. I walked back to the vehicle. Is
4 that part of the question?

5 Q. Sure.

6 A. At this point, I walked back to the
7 vehicle. I advised Mr. Nissen that I was going to be
8 issuing him two traffic citations for the reasons I
9 stopped him. I did advise him that I did have the
10 authority to tow his vehicle, which I was not going
11 to do. I advised him if he did refuse again to sign
12 my traffic citations, he would be under arrest.

13 Q. When you say "refuse again," was he
14 originally enthusiastic to sign the citations?

15 A. No.

16 Q. How did he convey to you that he was not
17 happy or excited to sign those citations? What did
18 he say or do?

19 A. Basically saying everything I was doing was
20 illegal; that I had no legal authority to be stopping
21 him. He did keep elevating his voice. I believe at
22 one point he pulled out his phone and tried to show
23 me a ~~YouTube~~ video. I can't even testify to what it
24 was, because I refused to watch it.

25 Q. The first time that he told you he didn't

1 want to sign the citations and you had no authority
2 to be doing any of this, did you at that time have,
3 as far as you understand, the legal authority to
4 arrest him and tow his vehicle?

5 A. I could have.

6 Q. Did you do that, or did you keep trying?

7 A. I kept trying, sir.

8 Q. And why did you keep trying not to escalate
9 your enforcement and arrest him and tow his vehicle?

10 A. Basically, sir, for -- well, for my officer
11 safety was one. I wanted to try and de-escalate the
12 situation as much as I could. I understand he was
13 very agitated. Based off my training and experience,
14 he was very agitated at the stop. I felt that I was
15 trying to give him a fair chance to comply with our
16 state laws and sign the citations. And I don't tow
17 every single vehicle that is not registered or
18 insured, so I felt like I was trying to give him the
19 fair opportunity to comply.

20 Q. Did your diplomacy eventually succeed?

21 A. It did, sir.

22 Q. So he signed the citation?

23 A. He signed the citations. I believe he said
24 he was going to educate me later on the law and
25 everything I was doing, but he did agree to sign the

*New Mexico's
Constitution is
that of federal
constitution
supercedes
all laws.
1st amendment
violation.
2015 Sept.
S. CT. Ruling*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

inclusion of Police officer which was moved as he begged him to do.

1 citations. At that point I placed the shotgun, I
2 believe, in the backseat of his vehicle where it was
3 no longer close within reach to him.

4 Q. So you didn't keep the shotgun; you
5 returned it to him?

6 A. I did, sir.

7 Q. And then as far as you were aware, was the
8 traffic stop essentially over?

9 A. At that point, sir, I believe that the
10 traffic stop had concluded.

11 Q. Now, I want to ask you a little bit about
12 the process. You write the citation, which then
13 Mr. Nissen signed as you described. Do you turn that
14 in to someone when you get back to the office?

15 A. It's a computer automated system. So as
16 soon as the citation is signed, I scan in the
17 signature so it shows to the Court that it was signed
18 by the driver. And then an administrative secretary
19 actually sends them out to the different court
20 agencies.

21 Q. And one of the things that gets sent out
22 from the court agency is a court date where someone
23 would appear as a result of your having written that
24 ticket and the defendant having signed it?

25 A. They sign knowing that this is the date and

1 time that you should be appearing.

2 Q. Okay. So on the face of the ticket at the
3 time, Mr. Nissen, if he read it, would have seen what
4 his court date was expected to be?

5 A. Yes, sir.

6 Q. Was that in the Torrance County Magistrate
7 Court?

8 A. I believe at the time I had cited him into
9 Bernalillo County Metro Court. And later on, as the
10 events had progressed, I had spoken with the district
11 attorney who advised that the traffic citation should
12 be issued into Torrance, because that's where the
13 stop was.

14 Q. So you complied with that instruction?

15 A. Yes, sir.

16 Q. As far as you are aware, did you comply
17 with all laws that exist and all instructions that
18 you got in how you conducted this traffic stop with
19 Mr. Nissen?

20 A. To my best knowledge, yes, sir.

21 Q. As far as you are aware, were you trying to
22 violate any of Mr. Nissen's rights?

23 A. Not at all, sir.

24 Q. At the end of your traffic stop with him,
25 was he free to go, and did he indeed drive away?

*Double jeopardy
2 sets of
tickets with
real court
dates -
Defendant in
messages or
evidence
clearly asked
for this issue
to be cleared
so I could
resolve this
issue in
court.*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. He did, sir.

2 MR. MYSLIWIEC: I'll pass the witness, Your
3 Honor.

4 THE COURT: Thank you, Mr. Mysliwicz.

5 Mr. Mkhitarian, do you have
6 cross-examination of Mr. Burd?

7 MR. MKHITARIAN: Thank you, Your Honor.

8 THE COURT: Mr. Mkhitarian.

9 MR. MKHITARIAN: Thank you, ladies and
10 gentlemen of the jury. I am Mr. Jack Mkhitarian. I
11 apologize, I didn't get a chance to speak earlier
12 today, so I'll take the time now to do that.

13 CROSS-EXAMINATION

14 BY MR. MKHITARIAN:

15 Q. Good afternoon. Is it Officer Burd?

16 A. It's officer.

17 Q. Officer Burd, did I hear it correctly that
18 you have five and a half years' experience in law
19 enforcement prior to coming here today?

20 A. Yes, sir. I started the law enforcement --
21 New Mexico State Police Law Enforcement Academy in
22 January of 2013.

23 Q. And did you serve all that time --

24 A. 2014.

25 Q. -- that whole time as an officer, has that

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 all been for State Police?

2 A. Yes, sir.

3 Q. So for a total of five and a half years?

4 A. Yes, sir.

5 Q. Would you agree that you've arrested, you
6 know, more than 100 people?

7 A. Yes, sir.

8 Q. Hundreds?

9 A. A fair assessment, I would say.

10 Q. And would you say you've probably pulled
11 over thousands of people?

12 A. Yes, sir.

13 Q. Now, in your experience in the five and a
14 half years, have you arrested people for putting you
15 in threatening situations?

16 A. Can you define that, sir?

17 Q. Are you familiar with the term felony or
18 high-risk stop?

19 A. Yes, sir.

20 Q. Could you explain to the jury what that is?

21 A. A felony stop, as far as our lingo is
22 concerned, would be a stop where immediately my
23 handgun or duty weapon would be drawn, knowing that
24 the person has already actively committed a felony or
25 possibly have the -- we had the reasonable suspicion

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 to believe they had already committed a felony. An
2 example of that would be a stolen vehicle that is
3 ran. You would immediately stop that vehicle with
4 your gun drawn, knowing that the vehicle is returning
5 stolen.

6 Q. How about if a vehicle you light up to pull
7 over starts driving erratically and thereby putting
8 the motoring public and yourself in danger? Is that
9 also grounds for a felony or high-risk stop?

10 A. It is.

11 Q. And did that happen in this situation?

12 MR. MYSLIWIEC: Objection, relevance.

13 THE COURT: Overruled.

14 BY MR. MKHITARIAN:

15 Q. Did that happen in this situation?

16 A. It didn't.

17 Q. So in a felony stop, would it be fair to
18 say that you're threatened by the driver's conduct
19 either sometime before he got into the car or while
20 he's in the car, thereby justifying you to pull your
21 weapon upon pulling him over?

22 A. Are you trying to define as me with prior
23 knowledge of his threatening level? I don't get what
24 you're saying.

25 Q. What I'm saying, if you have reason to

1 conduct a felony stop, part of a felony stop is that
2 that person's conduct was threatening either before
3 or while he was in the vehicle; is that correct?

4 A. Correct.

5 Q. But in this case, you were not threatened
6 when pulling over Mr. Nissen, so there was no reason
7 to do a felony stop?

8 A. I did not felony stop him.

9 Q. Okay. So now moving on to other people you
10 had pulled over. You had mentioned you had pulled
11 over hundreds. After a traffic citation or a DUI,
12 has anyone ever gotten aggressive with you to where
13 you had to arrest them and take them in?

14 A. Yes, sir.

15 Q. That didn't happen in this case, did it?

16 A. No, sir.

17 Q. Now, going back to the reason you pulled
18 Mr. Nissen over, there are a lot of things you
19 actually didn't see as well; is that correct?

20 A. What do you mean by that, sir?

21 Q. You didn't see Mr. Nissen speeding, did
22 you?

23 A. Are you talking about moving violations?

24 Q. Correct.

25 A. I didn't observe a moving violation.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Q. He was driving within his lane; correct?

2 A. He was.

3 Q. He was obeying all traffic signals;
4 correct?

5 A. He was on the interstate so there wasn't
6 any.

7 Q. When he pulled over, did he pull over
8 immediately?

9 A. I believe so.

10 Q. That would be something you'd be looking
11 for as well; correct? If he didn't pull over
12 immediately, that could be a sign that something is
13 wrong?

14 A. Possibly.

15 Q. But in this case he followed your commands,
16 pulled over in a safe location?

17 A. As safe as it could be.

18 Q. In an appropriate location?

19 A. Yes.

20 Q. He didn't stop in the middle of the
21 freeway?

22 A. No.

23 Q. He didn't slam his brakes?

24 A. No.

25 Q. Now, upon making contact with Mr. Nissen,

1 you said that he immediately began to talk about
2 travelers and his rights and things like that. Did I
3 hear that correctly?

4 A. Yes, sir.

5 Q. And if I'm not mistaken, the United States
6 Attorney told you that -- or asked you if you got
7 training about people like this; is that correct?

8 A. We have.

9 Q. And is that because -- did you get training
10 because it's so common to run into people with these
11 types of political beliefs?

12 A. It's not common, sir.

13 Q. Common enough to get training on it;
14 correct?

15 A. Exactly.

16 Q. So it's something that your department is
17 aware of and actively tries to educate you on; is
18 that correct?

19 A. That's correct.

20 Q. So you knew going into this that
21 immediately upon talking to him, your training kicked
22 in and said, "Oh, wait. Our department told us there
23 are people like this on the road."

24 A. I don't know if I'd use those words, but
25 yes.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Q. Okay. So you were not surprised and you're
2 actually trained to deal with some of the comments
3 that Mr. Nissen was making.

4 A. You can't be trained on driver's
5 statements, sir.

6 Q. But you were trained about the traveler
7 sovereign citizen questioning that Mr. Mysliwiec told
8 you about; is that correct?

9 A. We were trained on sovereign citizen
10 beliefs that certain individuals identify themselves
11 as travelers. But we can't specifically train for
12 each individual.

13 Q. And I'm not saying you're specifically
14 trained to pull over Mr. Nissen. But you and your
15 department are aware of these types of political
16 beliefs.

17 A. Yes, sir.

18 Q. Okay. Now you got training to do this, and
19 so it's not unusual for you to pull people like this
20 over. And as a matter of fact, Mr. Nissen tried to
21 educate you by explaining to you what his thoughts
22 were on -- I'm going to use his words -- his beliefs
23 or his politics; isn't that correct?

24 A. Well, I'd have to recant what you said
25 before when you said it's not unusual to stop. It

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

*IT this
out, Defendant
is done
everything by
the constitutional
law.*

1 was unusual.

2 Q. Okay. That's fine. But you received
3 training on these types of stops?

4 A. Yes.

5 Q. So throughout the course of your encounter
6 of Mr. Nissen, he was trying to show you articles,
7 trying to show you YouTube videos, trying to explain
8 to you why he thought you had no authority; is that
9 correct? Did I hear that right?

10 A. Yes, sir.

11 Q. So would you characterize him as trying to
12 teach you his political beliefs? Is that a way to
13 characterize what he was trying to communicate to
14 you?

15 A. I think he was trying to basically get out
16 of the traffic stop, is the way I saw it.

17 Q. By explaining to you how he felt about your
18 authority in the terms of his political beliefs?

19 A. Yeah, my authority to be -- to have
20 authority to make a traffic stop on him.

21 Q. So, now, throughout the traffic stop,
22 Mr. Nissen never made a motion for a gun, did he?

23 A. He never motioned for it.

24 Q. Did he make any threatening lunges at you
25 to make you feel like you were going to be battered

1 in any way?

2 A. He was in his driver's seat, so no.

3 Q. Did he ever threaten you that he was going
4 to shoot you or hurt you if you gave him a ticket?

5 A. No.

6 Q. After completing your business with him,
7 did Mr. Nissen drive off in an aggressive manner?

8 A. I can't recall his manner.

9 Q. Did you identify anything that was unusual
10 after completing the traffic stop?

11 A. No.

12 Q. Did he chase you and threaten you or
13 tailgate you or flip you off or anything like that?

14 A. I waited until he left before I left the
15 area.

16 Q. So is it safe to say that at the conclusion
17 of the traffic stop, you did not fear Mr. Nissen
18 battering you or harming you in any way?

19 A. No.

20 Q. Did you have any concerns, concern enough
21 to notify dispatch that "I just got through with this
22 traffic stop; I want to alert other officers that
23 there is this threatening person on the road"? Did
24 you do that afterwards?

25 A. What do you mean? Did I contact my

1 dispatch?

2 Q. Correct.

3 A. They were notified that I was out with a
4 combative subject. They were.

5 Q. Did you feel like the stop was threatening
6 enough to let other officers know that Mr. Nissen
7 could be a danger?

8 A. Yes, because two sheriff's deputies did
9 arrive on my stop.

10 Q. Okay. But after the stop was done, you had
11 no reason to believe that Mr. Nissen was going to
12 harm you or any other officer?

13 A. No, not and come back. I didn't believe he
14 was going to come back to my stop.

15 Q. At the time after you let him go?

16 A. Yeah.

17 Q. So you were completely safe with Mr. Nissen
18 leaving the traffic stop after you concluded the
19 business?

20 A. Yes.

21 MR. MKHITARIAN: May I have a moment, Your
22 Honor?

23 THE COURT: You may.

24 BY MR. MKHITARIAN:

25 Q. And one of the reasons why you felt safe is

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 because you actually put the gun back in Mr. Nissen's
2 car; is that correct?

3 A. No. I didn't feel safe giving it back to
4 him, but it was his legal property I couldn't deprive
5 him of unless it was for officer safety while we were
6 conducting our traffic stop.

7 Q. You didn't feel threatened enough by
8 Mr. Nissen to keep his firearm?

9 A. I didn't have the legal authority to not
10 return to it him if he wasn't under arrest.

11 Q. So you had returned the firearm and you had
12 let Mr. Nissen go, and at that point your business
13 had concluded?

14 A. Yes, sir.

15 MR. MKHITARIAN: I'll pass the witness,
16 Your Honor.

17 THE COURT: Thank you, Mr. Mkhitarian.

18 Mr. Mysliwicz, do you have redirect of
19 Mr. Burd?

20 MR. MYSLIWIEC: Brief.

21 THE COURT: Mr. Mysliwicz.

22 REDIRECT EXAMINATION

23 BY MR. MYSLIWIEC:

24 Q. Mr. Burd, we've been talking about
25 Mr. Nissen. Just for the jury's benefit, could you

1 tell us if you see Mr. Nissen in the courtroom today?

2 A. I do, sir.

3 Q. And could you describe where he's sitting
4 and maybe an article of clothing he's wearing so the
5 jury can know who you mean?

6 A. He's wearing a blue, long-sleeved shirt and
7 sitting at the very end of the defense's table.

8 MR. MYSLIWIEC: Your Honor, can the record
9 reflect that the witness has identified the
10 defendant?

11 THE COURT: The record will so reflect.
12 BY MR. MYSLIWIEC:

13 Q. So Mr. Mkhitarian asked you if you were
14 trained on ~~isovereign~~ sovereign citizens because they are so
15 common, and you said no. Do you know why the New
16 Mexico State Police trains patrol officers on the
17 existence of ~~sovereign~~ sovereign citizens?

18 A. Definitely, because it's for officer safety
19 purposes, because this specific group does not
20 identify local or state law enforcement as having the
21 authority to enforce laws on this specific group. A
22 lot of times we've been trained that they see county
23 sheriffs as the only ones that can enforce laws,
24 because their chief is an elected official.

25 Q. As far as you are aware, is the belief that

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
A
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 the New Mexico State Police is invalid or somehow
2 lacks authority to conduct traffic stops -- is that a
3 political belief?

4 A. I don't know how I'd define that, honestly.

5 Q. Were you trained that it's a political
6 belief?

7 A. It could be.

8 Q. Mr. Mkhitarian asked you if at the time of
9 the traffic stop you felt threatened. And
10 essentially, you said not enough to arrest him over
11 it; is that correct?

12 A. Yes, sir.

13 Q. Did you later learn that Mr. Nissen
14 threatened to kill you?

15 A. I did.

16 Q. And how did you later learn that?

17 A. From the dispatcher that received a phone
18 call from him approximately a half-hour after the
19 traffic stop was conducted.

20 Q. And did you ever receive any guidance on
21 what to do if you ever encountered Mr. Nissen again,
22 after having learned about that threat?

23 A. What do you mean by that, sir? I'm sorry.

24 Q. Did you ever get an all-officer bulletin or
25 a briefing before another shift or some kind of

1 guidance from the NMSP leadership about Michael
2 Nissen after he called in the threat to kill you?

3 A. That came about later, yeah.

4 Q. What guidance did you get?

5 A. I believe there was a photo of him placed
6 in our office. I believe also for our administrative
7 staff who worked during the day shift and let people
8 in and out of the building, I believe they were -- I
9 believe our administrative staff was told to avoid
10 the individual and let law enforcement deal with him
11 based off of threats, prior threats that had been
12 made.

13 Q. And since you're law enforcement, did you
14 get any instructions on what to do if you were on
15 patrol and saw this truck again with its lack of
16 insurance?

17 A. That he should definitely be in a
18 heightened security phase, that this individual had
19 made threats towards law enforcement.

20 MR. GLERIA: Objection, Your Honor. May we
21 approach?

22 THE COURT: You may.

23 (The following proceedings were held at the
24 bench.)

25 MR. GLERIA: So I don't want to have to

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 move for a mistrial. But now he's eliciting
2 testimony about prior threats, something that there
3 is no evidence about.

4 MR. MYSLIWIEC: That's not happening.

5 THE COURT: Why don't we do this? Why
6 don't you kind of clean it up that there are no prior
7 threats.

8 MR. MYSLIWIEC: Well, that would be false.
9 First of all, I don't know whose witness he is.

10 MR. GLERIA: Lower your voice, please.

11 THE COURT: Second of all, Mr. Mkhitarian
12 opened this line of questioning.

13 MR. GLERIA: Lower your voice, please.

14 MR. MYSLIWIEC: I need to be heard on the
15 record, Mr. Gleria. Mr. Mkhitarian asked on cross
16 whether at the time of this traffic stop Officer Burd
17 felt threatened. So I'm asking about what Officer
18 Burd learned after this traffic stop was over. I'm
19 not talking about any threats before November 2nd.
20 I'm asking Officer Burd only about the instructions
21 that he got after Mr. Nissen called in to Victoria
22 Gurule the specific threat to kill Officer Burd,
23 which is the subject of Count 1.

24 THE COURT: Well, I'm open to suggestions
25 to make sure the jury doesn't have any thoughts about

1 any prior threats. Is there a way that we can
2 eliminate that issue for the jury?

3 MR. MYSLIWIEC: I haven't brought the issue
4 up. It hasn't been the subject of any questions or
5 the subject of any answer.

6 MR. GLERIA: He testified about prior
7 threats and then he did it again. And that's not the
8 subject matter of the trial.

9 MR. MYSLIWIEC: Mr. Gleria's recitation of
10 the facts is inaccurate.

11 MR. GLERIA: Let me speak.

12 THE COURT: Hold on a second. Let me just
13 look at the transcript and see what we've got here.
14 The question is: "Did you later learn that
15 Mr. Nissen threatened to kill you?"

16 And he said, "I did."

17 "And how did you later learn that?"

18 It would seem to me that the jury would
19 just think it's the threat we've heard in opening
20 statements.

21 MR. GLERIA: See, I don't think so, Judge.

22 THE COURT: What would you think? It
23 didn't click with me, because I don't know of any
24 prior threats.

25 MR. GLERIA: The police officer testified

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 about prior threats.

2 MR. MYSLIWIEC: It didn't happen.

3 MR. GLERIA: The naked language is that
4 they have a prior experience with Mr. Nissen. He's
5 previously threatened them.

6 MR. MYSLIWIEC: That's contrary to the
7 testimony.

8 MR. GLERIA: He's looking it up right now.

9 THE COURT: I don't see it.

10 MR. GLERIA: It's just toward the end when
11 I objected to --

12 THE COURT: Let me go down here. All it
13 says -- where does it say it? I'm not sure the jury,
14 given what they've heard -- it didn't to me, because
15 I don't know of any prior threats before this. But
16 I'm open to anything to sort of eliminate that.
17 But --

18 MR. MYSLIWIEC: Any attention Mr. Gleria
19 wants to draw to prior threats, he can. But I
20 didn't --

21 MR. GLERIA: Can you find it there, Judge?
22 Because the officer twice stated "prior threats."

23 THE COURT: Well, it says right there -- it
24 says, "I believe our administrative staff was told to
25 avoid the individual and let law enforcement deal

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 with him based off of threats, prior threats that had
2 been made."

3 MR. GLERIA: I would just ask that those
4 statements be stricken, that testimony be stricken,
5 that the jury be instructed to disregard that and the
6 previous statements, in that it's irrelevant to the
7 case.

8 MR. MYSLIWIEC: That's improper. First of
9 all, the defense opened the door to --

10 THE COURT: Hold on. Tell me what you
11 would want me to say, Mr. Gleria, because I fear
12 that --

13 MR. GLERIA: I fear repeating it is going
14 to make it worse.

15 THE COURT: Well, the reason I think it is,
16 because I'm not sure, just like I know this case as
17 well or better than the jury, and it didn't ring any
18 bells with me. I just thought he was referencing the
19 phone calls that had been made. That's when the
20 bulletins and everything went out, is after he called
21 in. Tell me what you want me to do.

22 MR. GLERIA: Have Mr. Mysliwicz clean it
23 up.

24 THE COURT: How does he clean it up without
25 making it worse? I'm not sure there is a problem

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 right now, but if you want it cleaned up, we'll work
2 on it.

3 MR. MKHITARIAN: May I speak, Your Honor?

4 THE COURT: Yeah.

5 MR. MKHITARIAN: The leading question, no
6 prior threats were made prior to pulling him over.

7 MR. MYSLIWIEC: That's false, though. I'm
8 ~~not~~ going to elicit false testimony. I have not
9 asked about it. I'm happy not to ask about it. But
10 ~~I'm not~~ going to elicit false testimony.

11 THE COURT: Well, I don't know of any prior
12 threats the jury doesn't know of.

13 MR. GLERIA: I've got a concern because
14 it's right there.

15 THE COURT: Tell me what you want to do.

16 MR. MKHITARIAN: Not make more mention of
17 it.

18 MR. GLERIA: Instruct the jury to disregard
19 those.

20 MR. MKHITARIAN: We don't need to draw more
21 attention to it. Just leave it.

22 MR. GLERIA: Yeah. Well, if it happens
23 again, you can count on me to object.

24 MR. MYSLIWIEC: So here's my objection.

25 MR. GLERIA: He lost --

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

False testimony
of Huchel
evidence,
Gleria

1 MR. MYSLIWIEC: Are we doing the
2 one-attorney-one-witness rule?

3 THE COURT: I want to get this right. I'll
4 take what help I can get on this one. Probably we
5 need to do it. But let's get it right there. Is
6 there anything you can think of that you need? It
7 seems to me there is a 90 percent, 100 percent chance
8 that the jury doesn't have a clue what we're talking
9 about. Because I heard the words and nothing clicked
10 for me and I know the case. But I'm open to
11 suggestions. I'll probably do --

12 MR. GLERIA: Recess, move on.

13 MR. MKHITARIAN: Move on with the warning
14 not to talk about prior threats.

15 THE COURT: Why don't you come up, Officer.

16 (The witness approached the bench.)

17 THE COURT: In your testimony do not
18 mention any prior threats. Do not use the word
19 "prior." So don't.

20 MR. MYSLIWIEC: Anything that happened
21 before your traffic stop on November 2, pretend that
22 doesn't exist.

23 THE COURT: Mr. Mysliwiec is not going to
24 ask you about any questions about prior threats.
25 Mr. Mkhitarian is not going to ask you any questions

*Before
Nov 2, 2018
Defendant
never heard
anything to
do with
this so
called murder*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 about prior threats.

2 THE WITNESS: Yes.

3 MR. MYSLIWIEC: So you weren't asked about
4 anything that happened prior to November 2, and you
5 didn't say anything about anything that happened
6 prior to November 2. But in addition to continuing
7 not to say anything about anything that happened
8 prior to November 2, also don't use the word "prior."

9 THE WITNESS: So don't use the word
10 "prior." Yes, Your Honor.

11 THE COURT: Why don't you lead him through
12 this so he can maybe answer some yes/no questions.

13 MR. MYSLIWIEC: I'm almost done.

14 MR. GLERIA: And then when it's the
15 appropriate time I'd like to take a break so I can --
16 I don't know when that is -- just to use the
17 restroom.

18 MR. MYSLIWIEC: I have three witnesses.
19 We've been going for an hour since we came back from
20 lunch. I have three witnesses I absolutely need to
21 get through today. I don't know how much time this
22 took about a thing that never happened, but I do need
23 to move at least three.

24 THE COURT: Okay. Do you want to take a
25 break after this witness?

1 MR. GLERIA: That would be great.

2 THE COURT: Okay.

3 (The following proceedings were held in
4 open court.)

5 THE COURT: All right, Mr. Mysliwicz.

6 BY MR. MYSLIWICZ:

7 Q. The last thing I would like you to do,
8 Officer Burd, is, I'm going to play a phone call for
9 you and I want to ask you if you are able to identify
10 the speaker in the phone call. This is in evidence
11 as Exhibit 2. I'm not going to show you the
12 transcript, because I don't want you to see who I
13 think the speaker might have been. Tell me if you
14 know.

15 (Audio played.)

16 Q. Do you know who that was?

17 A. That's Mr. Michael Nissen's voice, sir.

18 Q. Can you tell the jury how you recognize
19 that voice?

20 A. I recognize that voice because I was on a
21 traffic stop with him for approximately 10 minutes.

22 Q. During that traffic stop, as far as you
23 know, were you derelict of your duty?

24 A. I was not, sir.

25 Q. As far as you know, are you a neo-Nazi?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. I am not, sir.

2 Q. As far as you are aware, are you a traitor?

3 A. I am not a traitor, sir.

4 MR. MYSLIWIEC: That's all I have, Your
5 Honor.

6 THE COURT: Thank you, Mr. Mysliwiec.

7 Anything further, Mr. Mkhitarian?

8 MR. MKHITARIAN: No, Your Honor.

9 THE COURT: All right, Mr. Burd, you may
10 step down.

11 Is there any reason Mr. Burd cannot be
12 excused from the proceedings? Mr. Mysliwiec?

13 MR. MYSLIWIEC: No, Your Honor.

14 MR. MKHITARIAN: No, Your Honor.

15 THE COURT: All right. You're excused from
16 the proceedings. Thank you for your testimony.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: All right. Let's be in recess
19 for about 15 minutes, and we'll come in and continue
20 the Government's case.

21 (The jury left the courtroom.)

22 THE COURT: All right. Anything we need to
23 discuss before we take our break, Mr. Mysliwiec?

24 MR. MYSLIWIEC: No, thank you, Your Honor.

25 THE COURT: Mr. Gleria?

1 MR. GLERIA: No, Your Honor.

2 THE COURT: All right. We'll be in recess
3 for about 15 minutes.

4 (The Court stood in recess.)

5 THE COURT: On the jury instruction on your
6 expert, is it going to be this FBI agent?

7 MR. MYSLIWIEC: The only guy who could
8 conceivably be an expert for us is a T-Mobile guy.
9 He's just kind of explaining how phone calls work. I
10 don't know how expert it is. But he personally knows
11 because of his interaction with the phone company and
12 how phone networks have evolved over the last decade
13 or so.

14 THE COURT: Well, the jury instruction
15 says -- you didn't give a name of the person who
16 expressed opinions concerning modern telephone
17 transmission technology. Is that the T-Mobile
18 person?

19 MR. MYSLIWIEC: Yes, sir.

20 THE COURT: So what do you want,
21 Mr. Gleria, Mr. Mkhitarian? Do you want the expert
22 witness instruction given and put the name of the
23 T-Mobile person in, or do you want to just pull it
24 and not talk about it?

25 MR. GLERIA: Just pull it.

*Author?
for the
F.B.I.? NMS?
WHO IN
GODS NAME
IS THIS?*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 THE COURT: I don't use the word "expert,"
2 so I'm not going to be putting that in, but...

3 MR. GLERIA: I'd just rather pull it and
4 not talk about it.

5 THE COURT: Are you okay with that,
6 Mr. Mysliwicz?

7 MR. MYSLIWIEC: He's essentially a fact
8 witness. I don't think we need the instruction.

9 THE COURT: All right. Just pull it.
10 Anything else before we bring the jury in?
11 Anything else I can do for you?

12 MR. MYSLIWIEC: No, sir. We're all here,
13 we're all seated. We're all ready.

14 THE COURT: Mr. Gleria?

15 MR. GLERIA: Yes.

16 (The jury entered the courtroom.)

17 THE COURT: All right. Mr. Mysliwicz, does
18 the Government have its next witness or evidence?

19 MR. MYSLIWIEC: The United States would
20 call Victoria Gurule to the witness stand.

21 THE COURT: All right. Ms. Gurule, if
22 you'll come up and stand next to the witness box on
23 my right, your left, before you're seated, my
24 courtroom deputy, Ms. Wright, will swear you in.

25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 VICTORIA GURULE,
2 after having been first duly sworn under oath,
3 was questioned, and testified as follows:

4 THE CLERK: Go ahead and be seated.

5 THE COURT: All right, Ms. Gurule,
6 Mr. Mysliwicz.

7 DIRECT EXAMINATION

8 BY MR. MYSLIWIEC:

9 Q. Ms. Gurule, now that you're sworn in, could
10 you please introduce yourself to the jury by telling
11 them your full name, occupation, and current
12 assignment?

13 A. My name is Victoria Gurule. I work for the
14 New Mexico State Police as a 911 dispatcher.

15 Q. How long have you been a 911 dispatcher?

16 A. A little over 13 years.

17 Q. Has all that time been with the New Mexico
18 State Police?

19 A. No, sir. Only two years with the State
20 Police. Previously was with the Bernalillo County
21 Sheriff's Department.

22 Q. And were you working on November 2, 2018,
23 last year?

24 A. Yes.

25 Q. And what shift were you working; do you

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 remember?

2 A. Swing shift.

3 Q. And what hours are swing shift?

4 A. 2:00 to 10:00.

5 Q. So you were working around 5:45 p.m. local
6 time?

7 A. Yes.

8 Q. Did you supervise or participate in any
9 traffic stops that happened around that time?

10 A. Yes.

11 Q. Do you remember if Officer Burd was
12 conducting one of the traffic stops that you
13 participated in?

14 A. Yes, sir.

15 Q. And did you know from supervising Officer
16 Burd on that traffic stop that he had a traffic
17 encounter with a person named Michael Nissen?

18 A. Yes.

19 Q. Did you ever receive any phone calls from
20 Michael Nissen later that day after the traffic stop
21 was over?

22 A. Yes. Not long after Officer Burd cleared
23 his traffic stop, I got a phone call from him.

24 Q. And how do you know that it's Michael
25 Nissen that called you when you say you got a phone

1 call from him?

2 A. Because I was on the radio that took
3 Officer Burd's traffic stop, so I knew who he was out
4 with.

5 Q. And did you recognize Mr. Nissen's voice
6 when you heard it?

7 A. Yes.

8 Q. And we're going to play it in just a
9 moment, but just for now, would you describe to the
10 jury how that first phone call sounded to you?

11 A. He was extremely agitated, very upset that
12 he was pulled over, just very aggressive. A lot of
13 yelling.

14 Q. Do you have a process as a dispatcher that
15 you're supposed to follow when you get what you would
16 describe as a complaint phone call?

17 A. Yes.

18 Q. What's that process?

19 A. If it's an initial complaint, we have a
20 standardized form that we fill out that goes straight
21 up to the captain.

22 Q. And did you receive a second phone call
23 from Mr. Nissen that same day?

24 A. Yes, sir.

25 Q. Would you describe that second phone call

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 as a mere complaint phone call?

2 A. It escalated. It wasn't just a normal
3 complaint for me.

4 Q. In your view, based on your training and
5 experience, what did that second phone call escalate
6 to?

7 A. It escalated into him threatening to hurt
8 any law enforcement officer that he came in contact
9 with.

10 Q. And what is the difference -- as you are
11 trained to take these calls and to do whatever you do
12 next, what's the difference between a complaint phone
13 call and a threat phone call?

14 A. That second phone call told me that -- I
15 mean, basically any law enforcement officer that
16 comes in contact with him is at risk. Clear disdain
17 for law enforcement. He was clearly upset,
18 threatening to hurt them. So that wasn't a typical
19 phone call for me.

20 Q. Do you treat threat phone calls the same
21 way, where you fill out a form and put it in the
22 captain's inbox?

23 A. No, sir.

24 Q. What do you do when it's a threat phone
25 call?

*Oh really?
where did
why wasn't
charged
for this
like the others?*

1 A. You notify the on-duty sergeant.

2 Q. And who was the on-duty sergeant that
3 night, if you remember?

4 A. Sergeant Steven Carroll.

5 Q. Are you experienced in working with
6 Sergeant Carroll?

7 A. Yes.

8 Q. Do you know -- and only answer if you
9 know -- what he does after you send him such a
10 notification?

11 A. No, that's --

12 Q. If you don't know, just say you don't know.
13 I'm never going to ask you to guess.

14 A. I don't know.

15 Q. Are you familiar with Sergeant Carroll's
16 demeanor when he deals with members of the public?

17 A. Yes.

18 Q. If I told you that I thought that Sergeant
Carroll threatened me, would you be skeptical or
would you believe that he probably did?

A. I would be skeptical.

Q. Why would you be skeptical if a person told
that you Sergeant Carroll threatened them?

A. I don't know him to operate that way. I've
worked on a shift with him for a while now, and it's

*Why this
statement
is two faced,
he says it and
but defendant
says it and
I'm guessing
she doesn't
know me
as she states
about Carroll.*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 just not his demeanor from what I've experienced.

2 Q. I'm going to play the first of the three
3 phone calls for you, and if you look on your screen
4 there is going to be a transcript also displayed.
5 The transcript is a demonstrative, which means it's
6 not an exhibit in evidence like the phone call is.
7 The phone call is the evidence. But while the jury
8 is here, I want you to be paying attention to both
9 the transcript and what you're hearing and if
10 anything is wrong in the transcript, I'm going to ask
11 you later about your opinion on that.

12 A. Okay.

13 Q. We're going to play the phone call that's
14 Exhibit 1.

15 (Audio played.)

16 Q. So can you confirm for us that you
17 recognize the speaker on that phone call to be
18 Michael Nissen?

19 A. Yes.

20 Q. There is a part where the transcript says
21 (Inaudible), where he says, "Learn what your
22 (inaudible) is all about." Did you hear that
23 Mr. Nissen said, "Learn what your oath is all about"?

24 A. Yes.

25 Q. Do dispatchers swear an oath when they take

1 their job?

2 A. No.

3 Q. The next thing I noticed in the transcript
4 is that the transcript indicates that Mr. Nissen
5 referred to you as a treasonous trader, as in one who
6 trades goods. Is that what you heard?

7 A. Yes.

8 Q. Could he also have been saying "treasonous
9 traitor," as in one who betrays their country?

10 A. Yes.

11 Q. Is there anything else in the transcript
12 that you heard differently than is currently listed?

13 A. No.

14 Q. Now, that was the phone call you described
15 as a complaint but not a threat; right?

16 A. Yes.

17 Q. And so after that, you filled out the form
18 that goes up to the captain; right?

19 A. Yes.

20 Q. Do you know if the captain read that form
21 before you got the second phone call we talked about?

22 A. I'm not sure.

23 Q. I'm about to play the second phone call we
24 talked about, and we're going to put up the
25 transcript for it as well. I'm going to ask you to

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 pay attention not only to the speaker, not only to
2 what's said, but if you see anything in the
3 transcript that you think is not correct based on
4 what you hear or remember, I'm going to ask you about
5 that later. Okay?

6 A. Yes.

7 Q. So we'll play Exhibit 2, is what we're
8 about to play now.

9 (Audio played.)

10 Q. As far as you could tell, does that
11 transcript look accurate?

12 A. Um-hum.

13 Q. Now, on the first phone call you said,
14 "I'll pass that complaint on to the officer."

15 A. Um-hum.

16 Q. Did you mean that?

17 A. Yes.

18 Q. At the time that you took that first phone
19 call, did you know that it was Officer Burd who had
20 pulled Mr. Nissen over?

21 A. Yes.

22 Q. And that's because you were on duty
23 supervising Officer Burd during that stop.

24 A. Um-hum.

25 Q. So you were being truthful with Mr. Nissen

1 on the first phone call.

2 A. Yes.

3 Q. Is that second phone call the one that you
4 told us you considered a threat?

5 A. Yes.

6 Q. And was there any specific language in
7 there that you thought was political in nature?

8 A. Not necessarily. I was more focused on the
9 fact that he threatened any law enforcement officer
10 he comes into contact with.

11 Q. As far as you know, none of the things you
12 considered to be threatening had anything to do with
13 politics or elections?

14 A. No.

15 Q. What did you do after you fielded this
16 second phone call?

17 A. After I took that phone call, I notified
18 the on-duty sergeant and let him know that it was an
19 individual from Officer Burd's traffic stop, and told
20 him the nature of the phone call, who it was. Gave
21 him the contact number just in case he wanted to do
22 anything with it at that point.

23 Q. And then I'm going to play for you -- did
24 you indeed get a third phone call that same night
25 from Mr. Nissen?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. I believe so.

2 Q. I'm going to play for you what's been put
3 into evidence already as Government's Exhibit 3, and
4 we're going to show a transcript at the same time,
5 just like we've been doing.

6 (Audio played.)

7 Q. Did you hang up on Mr. Nissen there, or did
8 he hang up on you?

9 A. I don't recall. I think he might have hung
10 up on me.

11 Q. Okay. Do you have training on the
12 difference between a complaint phone call and a
13 threat phone call, or is it just your experience over
14 time?

15 A. It's my experience over time. I haven't
16 had any training directly correlated to that itself,
17 but I've experienced a lot of it in my career.

18 Q. Do you have training on whether it's a good
19 idea to ignore things that you consider threatening,
20 given your experience?

21 MR. GLERIA: Objection, leading.

22 A. Yes.

23 THE COURT: Don't lead.

24 MR. MYSLIWIEC: I'll rephrase.

25

1 BY MR. MYSLIWIEC:

2 Q. What are you supposed to do if you consider
3 a phone call to be threatening rather than merely
4 complaining?

5 A. So if I deem something threatening in my
6 experience and in my training, it doesn't hurt to
7 notify the on-duty sergeant just to be aware of the
8 situation. It's not going to do any harm just to
9 notify him, just in case.

10 Q. Did you let Officer Burd directly know that
11 you had gotten these phone calls?

12 A. Yes.

13 Q. Why did you tell Officer Burd directly?

14 A. So I told him directly because of the area
15 that he pulled him over in, it's a little farther out
16 from centralized Albuquerque, so his backup is a
17 little farther out than anyone else's. And I told
18 him directly just in case he comes into contact with
19 him again, because, again, you never know. It's
20 better to be safe than sorry.

21 Q. I have an exhibit that I'm going to pull up
22 on the screen that is already in evidence as
23 Government's Exhibit 5. It's some phone records.
24 I'm going to ask you if you can identify whether you
25 recognize any of the phone numbers on this record.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 And tell me if you need to zoom in.

2 A. So I recognize the dispatch number to New
3 Mexico State Police.

4 Q. Which one is that?

5 A. 841-9256.

6 Q. So dialed number 841-9256?

7 A. Yes.

8 Q. So the first one, two, three, four, five,
9 six, seven, eight, nine, ten, 11, 12, 13, 14, 15 --
10 the first many phone calls were to your number?

11 A. Yes.

12 Q. And if I told you that these times listed
13 on the left side were six hours in the future because
14 of a time zone change, meaning that the first call
15 listed was actually November 2 at 6:16 p.m. and 27
16 seconds, is that about the time you reckon you got
17 that first phone call from Mr. Nissen?

18 A. I believe so.

19 Q. And does it comply with your recollection
20 that the next phone call from Mr. Nissen was about
21 four minutes later?

22 A. Yes.

23 Q. And does it comply with your recollection
24 that the next phone call from Mr. Nissen is about
25 four minutes after that?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

where is
barbara's
working?
I said
that?

1 A. Yes, sir.

2 Q. I'm not going to ask you anything you're
3 not certain of, but as far as you can tell, does this
4 record show the three phone calls that you got from
5 Mr. Nissen that we just listened to that are
6 Government's Exhibits 1, 2, and 3?

7 A. Yes, sir.

8 Q. And then when I call that number, does it
9 directly connect me to emergency dispatch, or do I
10 have to select emergency for it to go to you?

11 A. It's an automated system. You have to
12 select the number.

13 Q. If I select not emergency, does that go to
14 you?

15 A. Yes.

16 Q. It still goes to you?

17 A. Yes.

18 Q. Do you know who Barbara Beuzekom is?

19 A. Yes.

20 Q. What do I have to select to have my call go
21 to her?

22 A. I'm not sure. I'm not sure of the
23 extension.

24 Q. But not the same thing I select to go to
25 you?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. No, sir.

2 Q. Do you know if all phone calls to you are
3 recorded?

4 A. Yes.

5 Q. Do you know if all phone calls to Barbara
6 Beuzekom are recorded?

7 A. I'm not sure.

8 MR. MYSLIWIEC: That's all I have. I'll
9 pass the witness, Your Honor.

10 THE COURT: Thank you, Mr. Mysliwicz.

11 Mr. Gleria, do you have cross-examination
12 of Ms. Gurule?

13 MR. GLERIA: Thank you, Your Honor.

14 THE COURT: Mr. Gleria.

15 CROSS-EXAMINATION

16 BY MR. GLERIA:

17 Q. Good afternoon, Ms. Gurule.

18 A. Good afternoon, sir.

19 Q. Ms. Gurule, Mr. Nissen called you -- do you
20 remember what time the first call came in?

21 A. I'm not sure of the exact time, sir.

22 Q. You said you were on a swing shift?

23 A. Yes.

24 Q. Is that nighttime?

25 A. Yes.

*she said
right after
spoke to
her it was
recorded, I
never hung
up. She
passed the
phone.*

1 Q. And you were not threatened by any of the
2 three calls yourself, were you?

3 A. No.

4 Q. Okay. And regarding the first call, you
5 had a chance to hear that call again today?

6 A. Yes.

7 Q. Does that refresh your memory about the
8 content of the call?

9 A. Yes.

10 Q. And Mr. Nissen called to tell you, I guess,
11 about federal law, and a way to put it would be to say
12 that he called to educate you or have you educate
13 other police about the law?

14 A. Yes.

15 Q. Okay. And that's what he told you; right?
16 That that was the purpose of his call?

17 A. Um-hum.

18 Q. Okay. And he also complained quite a bit;
19 is that right?

20 A. Yes.

21 Q. And he was complaining about his
22 constitutional rights being violated. Isn't that
23 what he said?

24 A. Yes.

25 Q. And he had some choice statements to make?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. Yes.

2 Q. Some profanities. It must not feel good to
3 hear that.

4 A. No, sir.

5 Q. But you've been doing this for 13 years.
6 I'm sure it's not the first time that you've had
7 profanity on a dispatch call.

8 A. Correct.

9 Q. And you state to Mr. Nissen, after he talks
10 about having his day in court, you state, "Good luck
11 with that"; isn't that right?

12 A. Um-hum.

13 Q. And you sound calm; right? I mean, you're
14 seated in a dispatch office somewhere; right?

15 A. Yes, sir.

16 Q. You're nowhere near Mr. Nissen; right?

17 A. No.

18 Q. And Mr. Nissen and his contact with Officer
19 Burd was over; right?

20 A. Right.

21 Q. And he didn't have any further contact with
22 Officer Burd.

23 A. No, not that I'm aware of.

24 Q. And you knew that Mr. Nissen was traveling
25 westbound?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. Correct.

2 Q. So he was already outside of the service
3 area of Officer Burd by the time he had called. Or
4 you don't know where he was, do you?

5 A. I don't know.

6 Q. Last we knew, he was traveling westbound.

7 A. Correct.

8 Q. But Officer Burd's a Torrance County
9 sheriff; is that right?

10 A. Correct.

11 Q. And we're not in Torrance County at that
12 point.

13 A. Correct.

14 Q. You testified that he also stated that in
15 the second call, I believe it was, or maybe the third
16 call, or maybe the second call -- I'm getting
17 confused -- that he states that "All I've been doing
18 is practicing my First Amendment with you guys." You
19 heard that; right?

20 A. Correct.

21 Q. Okay. And is it your protocol to contact
22 the sheriff every time you have someone making
23 aggressive statements?

24 A. No, it's not protocol.

25 Q. It's not protocol?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. Hum-um.

2 Q. All right. So is it your protocol to
3 contact the sheriff, like -- well, what you said was
4 that -- what you said was, "It doesn't hurt to notify
5 the sergeant."

6 A. Correct.

7 Q. Okay. So that's what you did, if you deem
8 it to be threatening, which you already testified
9 that you did --

10 A. Yes.

11 Q. -- that it doesn't hurt to notify the
12 sheriff -- or the sergeant?

13 A. Correct.

14 Q. Is that why you notified the sergeant?

15 A. Yes.

16 Q. And then you testified that you called
17 Officer Burd, too; right?

18 A. Yes.

19 Q. Okay. But isn't it correct that Mr. Nissen
20 spoke in figurative language? And if you don't
21 understand what I'm saying, say so.

22 MR. MYSLIWIEC: Objection, calls for an
23 opinion from a fact witness.

24 MR. GLERIA: Oh.

25 THE COURT: Well, I'll let her give her

1 interpretation of what occurred.

2 BY MR. GLERIA:

3 Q. So a pig is not a human being; right?

4 A. Because of the context of what he was
5 saying, that's how I interpreted it.

6 Q. Well, context is very important in this
7 particular case. But when he refers to pigs on the
8 road, I mean, isn't that the definition of figurative
9 speech?

10 A. Yes, sir.

11 Q. Okay. And clearly exaggerated because a
12 human being can't be a pig; right?

13 A. Right.

14 Q. And, therefore, not literal; right? He's
15 not literal in his statements that he made to you?

16 MR. MYSLIWIEC: Objection. It's a compound
17 question because it refers to multiple statements in
18 one question.

19 THE COURT: Well, why don't you take them
20 one at a time.

21 BY MR. GLERIA:

22 Q. Okay. So if he's referring to unnamed
23 individuals as pigs, then that is figurative, is it
24 not?

25 A. Yeah. Yes, sir.

*Arbitrary
Abuse of
Power by
Judge to
reconstruct
Defendant's
statements.*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Q. And it's therefore exaggerated, is it not?

2 A. Again, because of the context of the
conversation.

Q. And I understand. I understand what you're
saying. I mean, it can't be pleasant and I
understand that. But it's clearly not literal.

MR. MYSLIWIEC: Objection. Is that a
question?

MR. GLERIA: It is a question.

THE COURT: It's proper. Overruled.

BY MR. GLERIA:

Q. It's clearly not literal. And this
occurred on the telephone; right?

A. Correct.

Q. So Officer Burd is nowhere around.

A. Correct.

Q. I mean, we don't know where Officer Burd
is; isn't that right?

A. Correct.

Q. And we don't really know where Mr. Nissen
is.

A. Correct.

Q. So there is a big separation of space. I
mean, isn't that correct?

A. Correct.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

*True sheet
defendant?
Judge should
have acquitted
Defendant
Rule 29
Directed
verdict
Acquittal*

1 Q. Okay. And when Mr. Nissen -- would you
2 describe his complaints or his statements as a rant?

3 A. Somewhat.

4 Q. He was ranting, wasn't he?

5 A. Somewhat.

6 Q. All right. What he said was, in the second
7 call -- no, I'm sorry. Take that back. And what he
8 said was, "The next time I get stopped, I'm going to
9 do this and that to your stupid pigs." Isn't that
10 right?

11 A. Correct.

12 Q. Okay. But there was never a next time.
13 Isn't that true?

14 A. Correct.

15 Q. So it was conditioned on being stopped. He
16 was never stopped a second time.

17 A. Correct.

18 Q. Correct? And you contacted the sergeant in
19 this particular case because you wanted to notify him
20 of these statements; isn't that right?

21 A. Correct.

22 Q. And were you instructed to contact Officer
23 Burd?

24 A. No.

25 Q. And you stated that you called Officer Burd

*Contingency
True threat
under
statutory
law*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 because, quote, you never know.

2 A. Correct.

3 Q. That's the reason; right? You never know,
4 like, as a precaution?

5 A. Correct.

6 Q. Okay. But not because you believed
7 anything was going to happen.

8 A. As a precaution, yes.

9 Q. As a precaution. You did this as a
10 precaution?

11 A. Yes.

12 Q. ~~Not~~ because of imminent threat; right?

13 A. Somewhat.

14 Q. Somewhat?

15 A. Yes.

16 Q. Okay. So here we are on the telephone,
17 separated by distance; right? We don't know what the
18 distance exactly is. Mr. Nissen tells you that,
19 "Next time, if it happens again, this is what I'm
20 going to do to pigs"; right?

21 A. Right.

22 Q. You already said it's figurative and not
23 literal; right?

24 MR. MYSLIWIEC: Objection. It was
25 describing Officer Burd as a pig that she says was

*prosecution
misstating
my words*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 figurative.

2 THE COURT: Well, I think she can answer
3 the question. Overruled.

4 BY MR. GLERIA:

5 Q. Isn't it true that one of the main things
6 Mr. Nissen had to say was that his rights were being
7 violated, and that's the reason he called?

8 A. Correct.

9 Q. Okay. And his statements were political,
10 because he's talking about the constitution and his
11 rights?

12 A. Correct.

13 Q. And those are the statements he made to
14 you; right?

15 A. Correct.

16 Q. Okay. And he never said, "I'm going to
17 hurt you, Ms. Gurule; I'm going to harm you"?

18 A. No.

19 Q. Okay. All right.

20 MR. GLERIA: If I could just have a moment,
21 Your Honor.

22 THE COURT: You may.

23 MR. GLERIA: Just a couple more questions,
24 Your Honor.

25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 BY MR. GLERIA:

2 Q. So when he said, "I'm going to have my day
3 in court," and you said, "Good luck with that," you
4 didn't seem alarmed.

5 A. No.

6 Q. And is that how you're trained to
7 responded? "Good luck with that"?

8 A. My safety wasn't in question at that point.

9 Q. Okay. But no, I'm talking about the
10 statement he said, "I'm going to have my day in
11 court," and you said, "Good luck with that."

12 A. Yeah, that was my way of ending the
13 conversation.

14 MR. GLERIA: All right. Thank you.

15 THE COURT: All right. Thank you,
16 Mr. Gleria.

17 MR. GLERIA: You're welcome.

18 THE COURT: Mr. Mysliwicz, do you have
19 redirect of Ms. Gurule?

20 MR. MYSLIWICZ: Brief.

21 THE COURT: Mr. Mysliwicz.

22 REDIRECT EXAMINATION

23 BY MR. MYSLIWICZ:

24 Q. Ms. Gurule, just to be clear, do you know
25 if Officer Burd works for the Torrance County

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Sheriff's Office or the New Mexico State Police?

2 A. He works for the New Mexico State Police.

3 Q. Okay. But he works in Torrance County for
4 the New Mexico State Police.

5 A. Yes.

6 Q. So he has interaction with the Torrance
7 County sheriff's deputies?

8 A. Yes.

9 MR. MYSLIWIEC: Alex, can I ask you to pull
10 up 2-A.

11 Q. Do you know Officer Burd?

12 A. Somewhat.

13 Q. Did you like Mr. Nissen referring to him as
14 a pig?

15 A. No.

16 Q. When you say that you considered the second
17 phone call to be threatening rather than merely a
18 complaint, was it the "pig" comment that was
19 threatening?

20 A. It was the fact that he's saying he's going
21 to put a bullet in the pig's head. That's an
22 imminent threat, to me.

23 Q. But it wasn't -- it wouldn't have been okay
24 to you if the caller had said, "I'm going to put a
25 bullet in Officer Burd's head"?

*Political
Witchhunt
cause I
know my
rights
Melissa A
Morris
was right
about her
statement,
I made
Political
Enemies*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. That wouldn't have been okay.

2 Q. Because the pig comment isn't the part that
3 mattered to you, was it?

4 A. That's not the part that mattered.

5 Q. And when we go later in the phone call, and
6 we say, "I'm going to put that motherfucker drop
7 dead," you did not consider that a threat because of
8 the word "motherfucker," did you?

9 A. No.

10 Q. What did you consider a threat about that
11 paragraph, if anything?

12 A. The "drop dead" comment. Again, telling me
13 he's going to hurt a law enforcement officer.

14 Q. Did he say he was going to pull out a water
15 balloon and put that motherfucker drop dead?

16 A. Yes.

17 Q. Do you know what a revolver is?

18 A. Yes.

19 Q. What's a revolver?

20 A. A firearm.

21 Q. As far as you're aware, a revolver is equal
22 to water balloons in dangerousness or more dangerous
23 than water balloons?

24 A. More dangerous.

25 Q. Can you confirm for us that even though you

over said
law enforcement
political
watch hunt
water
balloon?
What is
his force
statement
about?

1 might not like a person you know being called a
2 motherfucker, can you confirm for us that you did not
3 believe this to be a threatening phone call because
4 of that word?

5 A. That's correct.

6 Q. Would you have treated this phone call
7 exactly the same if none of the "pigs" and none of
8 the curse words were in it?

9 A. That's correct.

10 Q. ~~The~~ pig language was figurative. We've met
11 Officer Burd. He is a human. But did you take the
12 two threats in this phone call to be real threats?

13 A. Yes.

14 MR. MYSLIWIEC: That's all I have.

15 THE COURT: Thank you, Mr. Mysliwiec.

16 Anything further, Mr. Gleria?

17 MR. GLERIA: No, Your Honor.

18 THE COURT: All right. Ms. Gurule, you may
19 step down.

20 Is there any reason that Ms. Gurule cannot
21 be excused from the proceedings, Mr. Mysliwiec?

22 MR. MYSLIWIEC: No, sir.

23 THE COURT: Mr. Gleria?

24 MR. GLERIA: No, Your Honor.

25 THE COURT: All right. Ms. Gurule, you are

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 excused from the proceedings. Thank you for your
2 testimony.

3 All right. Does the Government have its
4 next witness or evidence, Mr. Uballez?

5 MR. UBALLEZ: Yes, the United States calls
6 Kenneth Lecesne.

7 THE COURT: All right. If you'll come up
8 and stand next to the witness box on my right, your
9 left, before you're seated, my courtroom deputy,
10 Ms. Wright, will swear you in.

11 KENNETH P. LECESNE,
12 after having been first duly sworn under oath,
13 was questioned, and testified as follows:

14 THE CLERK: You may be seated.

15 THE COURT: Would you state your name?

16 THE WITNESS: My name is Kenneth P.
17 Lecesne.

18 THE COURT: All right. Mr. Lecesne,
19 Mr. Uballez.

20 MR. UBALLEZ: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. UBALLEZ:

23 Q. Good morning.

24 A. Good morning, sir.

25 Q. Mr. Lecesne, where do you work?

1 A. I work for T-Mobile, a cellular telephone
2 company, in Richardson, Texas.

3 Q. What do you do for T-Mobile?

4 A. My official title is records
5 custodian/testifier.

6 Q. What are the responsibilities of a records
7 custodian?

8 A. When I'm assigned to a specific trial, I
9 usually travel. I attend court and I authenticate,
10 explain, and certify the T-Mobile phone records
11 involved in a specific trial.

12 Q. How long have you held this role?

13 A. Since August of 2011.

14 Q. Is it all for T-Mobile?

15 A. Back in 2011, I actually started doing this
16 for Metro PCS. In 2012, 2013, T-Mobile acquired
17 Metro PCS, so I moved over to T-Mobile as a records
18 custodian also.

19 Q. Your relevant job experience before August
20 of 2011?

21 A. Well, I actually retired twice before then.
22 I retired from the Dallas Police Department after 28
23 years of service. I worked patrol, narcotics, and
24 ran the task force for the DEA. I left there and I
25 retired from DPD in 2005, and I went to an IT

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 company, Perot Systems Corporation, and I was the
2 physical security director there for five years, and
3 then I went to Metro PCS in 2011.

4 Q. In that experience prior to 2011, did you
5 have experience working with cellular phones and
6 their manners of routing?

7 A. Yes. When I was assigned to the Drug
8 Enforcement Administration, I ran a task force, and
9 that team that I led, we did wiretaps on cellular
10 telephones involving drug-trafficking from Mexico
11 into the United States and following the money back
12 to Mexico.

13 Q. So you're familiar, then, with the manner
14 in which cellphones, I guess you could say,
15 historically have routed their calls from one device
16 to another?

17 A. That's correct.

18 Q. And you had described a changeover from
19 Metro PCS to T-Mobile in around 2013. Were there any
20 adaptations in technology in the way cellphones were
21 routed between units, 2011 to current?

22 A. Yes. Well, Metro PCS was on a different
23 network, the CDMA network, which was a totally
24 different network than the current network it's on
25 now, which is a GSM network. That's a little bit

1 technical, and I'm not an engineer or anything, but
2 it was two different types of networks.

3 Q. Can you describe the network that's
4 currently in place at T-Mobile?

5 A. T-Mobile uses the GSM network. That is the
6 most prevalent network used in the cellular telephone
7 business now. It's just a different type of way.
8 There is a switching station involved. The switching
9 stations for T-Mobile are all over the United States,
10 but the switching station has no bearing on where a
11 particular phone was. The switching station is the
12 computer that creates the call detail records with
13 the cell site information to show where a particular
14 phone was during a specific call being made or
15 received by the T-Mobile customer.

16 Q. If you could describe for the jury, then,
17 the process that happens currently when a T-Mobile
18 subscriber uses his or her cellphone to call another
19 cellphone.

20 A. It's going to be very basic, because I'm
21 not an engineer. When you use your cellphone to
22 either make a call or receive a call, you hit the
23 "send" button. A signal, a radio wave, will go from
24 your phone and usually goes to the nearest tower from
25 where the phone is located during the duration of the

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 call.

2 In this day and age, in 2018, 2017, most
3 calls are what are called Wi-Fi calls, and it's done
4 automatically using an LTE cell site. You hear
5 things like 3G, 4G. Now you're hearing about 5G.
6 Smartphones now, when you use your cellphone, it will
7 automatically either direct your call to an LTE site
8 or a conventional tower. Most cellphone companies,
9 especially T-Mobile now and the other two larger
10 companies, use LTE sites. They're more prevalent now
11 than the conventional towers.

12 Q. So explain the role of the switch in
13 relationship to the towers.

14 A. The switching station is the computer that
15 facilitates the hold process of the call. The call
16 detail records for T-Mobile subscribers, T-Mobile
17 customers that use our network, and other companies
18 that use our network, that information is stored on
19 the switching station that handled the incident, the
20 phone calls that are made or received by the T-Mobile
21 customers; or a partner, like Ultra or Boost, who
22 also use our particular network.

23 When a legal demand comes into T-Mobile in
24 the form of a search warrant, a court order, or a
25 subpoena from a government entity, from the police,

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN

PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 DA's office, FBI, Homeland Security, DEA, that legal
2 demand is processed by a person that works in the law
3 enforcement relations section of the subpoena
4 compliance unit for T-Mobile. We have three offices.
5 One is in New Jersey, one is in Pennsylvania, and one
6 is in Richardson, and that's the office that I work
7 in.

8 We also get legal demands from insurance
9 companies. We get legal demands from nongovernmental
10 entities, and we process those legal demands also.
11 And that information is sent back to the requester,
12 specifically responding to the legal demand, what is
13 requested, and the date range that is requested if
14 the information is still available.

15 Q. Without the switch playing its role, does
16 the call go from one phone to another?

17 A. The switch is a very important part of the
18 actual whole function. The switch is the computer
19 that creates the call detail records, but it's also
20 where the information is actually stored. It's a
21 computer. We have them all over the country.
22 T-Mobile is nationwide, and we have switches all over
23 the country, in almost all 50 states. Not all 50
24 states have a switch in their particular area.

25 Q. Are you aware of any switch that exists in

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 New Mexico?

2 A. No, sir, I'm not.

3 Q. Are you aware of any switches that exist in
4 Texas?

5 A. There's multiple switches in Texas, yes,
6 sir.

7 Q. In preparation for today, you reviewed an
8 item which I showed you that appeared to be certain
9 records from T-Mobile. Do you remember looking at
10 those?

11 A. Yes, sir.

12 Q. I'm going to show you -- does this appear
13 to be the first page of that document that I showed
14 you?

15 A. Yes, sir.

16 MR. UBALLEZ: And Your Honor, for the
17 record, this is what's been already moved in and
18 admitted as Exhibit 5 for the record.

19 Q. And can you tell me what this first page
20 is?

21 A. This is a certification document that was
22 actually created by the specialist who actually
23 processed the legal demand that came into the
24 company.

25 Q. And have you prepared similar documents

1 yourself?

2 A. Yes, sir.

3 Q. And are you aware with the language that's
4 on these documents under the statement "I further
5 state that"?

6 A. Yes.

7 Q. You're familiar with that language?

8 A. Yes, that's the standard form that we send
9 back when a certification is actually requested.

10 Q. And is that true and correct with relation
11 to the records that you have previously reviewed that
12 we're representing as Exhibit 5?

13 A. That's correct.

14 Q. I'm going to show you page 2. And just so
15 we know, who is Peggy Shelley?

16 A. Peggy Shelley is a specialist, a subpoena
17 compliance specialist for T-Mobile. She works in the
18 Richardson office. I know her personally. I've
19 worked with her before. And she processed the legal
20 demand and she created the actual sheet, the previous
21 sheet that you just saw.

22 Q. With regard to these records, you've also
23 verified that these are the true and correct records?

24 A. That's correct. Whenever I'm assigned to a
25 specific case, I'm usually sent the T-Mobile phone

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 number that was actually involved in the case. And
2 what I will do is, I will go into our system and I
3 will pull the records to make sure that the records
4 that I received are the same records that we sent.

5 Q. These records I'm showing you -- let's
6 start with talking about the columns and what they
7 mean. There is obviously a date and a time column.
8 Can you describe those for us?

9 A. Yes, the date is the date of a specific
10 phone call or text message, in this instance. I
11 believe on these records it's phone calls, either
12 incoming phone calls or outgoing phone calls.

13 Q. Is that in Mountain Standard time?

14 A. The time zone, it depends on the actual --
15 it's in Mountain. It could be in Mountain Standard
16 or Mountain Daylight Saving time.

17 Q. In your review of these specific records,
18 they're in universal time; is that correct?

19 A. Universal coordinated time. It's not a
20 time zone. So you'd have to do a conversion to get
21 Mountain Standard Time or Mountain Daylight Time.

22 Q. Is this standard in these types of records,
23 to be in the UTC?

24 A. Yes. All of our records from the specific
25 time zone. I know in 2018, 2017, and parts of 2016,

1 they're all in UTC. And everything going forward
2 will be UTC.

3 Q. What is the difference in time between UTC
4 and Mountain Standard?

5 A. I have a sheet right here that I made up
6 myself in Mountain Standard Time. You'd have to
7 subtract seven hours from the time stamp on the
8 records themselves to get New Mexico time.

9 Q. That's during standard --

10 A. During Mountain Standard Time; that's
11 correct.

12 Q. And is it different during Daylight
13 Standard Time?

14 A. You have to subtract six hours.

15 Q. So then if you could do some quick math for
16 us, that first one there at the top, can you see it?
17 Can you read it okay?

18 A. Yes, 11/3 of 2018.

19 Q. And the time listed is 001627. Was that,
20 in fact, the -- if you convert it to Mountain
21 Daylight Time, what would that be?

22 A. Well, 11/3 of 2018. Daylight Saving Time
23 started on March 11, 2018, at 2:00 a.m. So that's
24 going to be, in Mountain Standard Time, 11:30. So
25 you'd have to subtract seven hours from that time

1 stamp on that record.

2 Q. When did the Daylight Saving Time end,
3 again?

4 A. Daylight Saving Time started at 2:00 a.m.
5 on March 11, 2018. I looked it up, yes, sir.

6 Q. And when did it end?

7 A. It ended on November 4 of 2018. I'm sorry,
8 yes, it ended on November 4 of 2018. So it's still
9 Daylight Saving Time on that particular date, yes.

10 Q. It's still Daylight Saving Time and you
11 subtract six?

12 A. Six. Yes, I'm sorry.

13 Q. And after the 4th of November, would it be
14 as you stated, you subtract seven?

15 A. Seven, yes.

16 Q. Let's talk about the next column. It says
17 "duration." What measure of time is that in?

18 A. That's seconds. That's how long the call
19 lasted, whether it's an incoming or outgoing call.

20 Q. Call type? What is that?

21 A. The call type, MOC stands for mobile
22 outgoing call, an outgoing call from the T-Mobile
23 number to another phone number.

24 Q. The direction?

25 A. The direction is outgoing. It was an

1 outgoing call.

2 Q. And then let's skip over to -- can we
3 assume the dialed number, the called number,
4 destination number, are the number which we would
5 collectively understand to be the one that the phone
6 was placing a call to?

7 A. That's correct. The calling number would
8 be the T-Mobile number that was requested to be
9 searched. The dialed number would be the number that
10 was dialed by the caller. The destination number
11 would be the number that was reached by the caller.

12 Q. What is an IMSI and IMEI?

13 A. The IMSI is the International Mobile
14 Subscriber Information. That's how we bill the
15 customer for using our network.

16 Q. And the IMEI?

17 A. The IMEI is the serial number of the
18 cellphone itself that was used by the customer.

19 Q. And I want to direct your attention here to
20 the middle column. It's entitled "switch name." Do
21 you see that there?

22 A. That's correct.

23 Q. Is that the switches that you were
24 referring to earlier through which calls must be
25 routed and information is gathered?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. That's correct. That's where the
2 information is also stored, and when a legal demand
3 comes into the company, it's a computer; the
4 information that's requested and the date range is
5 actually pulled from that and sent back to the
6 requester.

7 Q. These switches here -- or I should say
8 singular switch, because they appear to be all the
9 same; is that correct?

10 A. They're all the same on this document, yes,
11 sir.

12 Q. And it's identified as TTTAS 005; is that
13 correct?

14 A. That's correct.

15 Q. Where is that switch?

16 A. That switch is in Plano, Texas.

17 Q. Moving down, there is a column entitled --
18 two columns entitled, first tower lat, first tower
19 long. What do those refer to?

20 A. That would be the exact location of the --
21 in this instance it's an LTE site, because it was a
22 Wi-Fi call that was made. With Smartphones, it
23 automatically will either send you to a conventional
24 tower or an LTE site. LTE site stands for long-term
25 evolution. You hear these things about 2G, 3G, 4G,

1 and now they're talking about 5G. With Smartphones,
2 automatically -- you don't have to do anything to
3 make a Wi-Fi call. And a Wi-Fi call was handled by
4 an LTE site, long-term evolution site.

5 Q. Then following that directly is a first
6 tower address, first tower city, first tower state.
7 Do you see those?

8 A. That's correct.

9 Q. Describe what those are.

10 A. ~~If an individual~~, an investigator, was
11 trying to map where the phone was in relation to the
12 tower that handled the call, they would actually use
13 that information. The first tower latitude, which is
14 a positive decimal number, and the first tower
15 longitude, which is a negative decimal number, you
16 would put that into whatever software you're using,
17 GoogleMaps, to actually create a map onto where the
18 cell phone was in relation to the tower that handled
19 the call.

20 Q. So this would be the tower to which the
21 call and the person placing the call connected first?

22 A. That's correct.

23 Q. And so this first call, then, on line 1,
24 dated 11/3/18, at 001627, would have first routed to
25 a tower in Edgewood; is that correct?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. That's correct. Edgewood, New Mexico. And
2 that's the closest physical address. The latitude
3 and longitude is the exact location of where that
4 particular LTE site is.

5 Q. And that second one, then, would have been
6 routed to a tower in Tijeras?

7 A. That's correct.

8 Q. And the third one is Bernalillo east?

9 A. That's correct.

10 Q. And the fourth and remaining in the city of
11 Albuquerque, New Mexico.

12 A. That's correct.

13 Q. Go to the final page of Exhibit 5. What is
14 on this page?

15 A. This is subscriber information for the
16 phone number that was requested to be searched. That
17 phone number is (505) 819-1806.

18 Q. And does it indicate -- so that first
19 section under "subscriber details," what type of
20 information is contained there?

21 A. You have the subscriber name, the name of
22 the person, who was a Michael Nissen who opened the
23 account. That was the name given by the customer
24 when they opened the account.

25 Q. And then the device details section, the

*his show
over to tower
string to
N.M.S?
computer i plus
is where
GPS as
tated i
SE's report
out right
to the tel
this never
crossed
state lines
GPS phone
info only*

1 first line begins IMSI. What type of information is
2 contained in here?

3 A. The IMSI is the International Mobile
4 Subscriber Information. That's also listed on the
5 caller detail records. I'm sorry, I put my finger
6 there. That is how T-Mobile bills the customer for
7 using the service.

8 Q. Then down -- there is a number, the IMEI
9 number. Remind us what that is again.

10 A. That is the international mobile equipment
11 identifier. That is the unique number for that
12 specific telephone itself. That is made at the
13 factory. That is put on that phone at the factory
14 where the phone was actually made. It's usually
15 underneath the battery in the back of the phone.

16 Q. Now, here it lists the final number in the
17 IMEI as 2, and I believe if we go back to page 1, the
18 final number is zero. Do you know why that is?

19 A. The call detail records of that final
20 number will always be zero. The other numbers will
21 be the exact same numbers that are in the IMEI
22 number. On the records, the final number is zero.
23 But they'll match -- the rest of the numbers will
24 match everything but that last digit.

25 MR. UBALLEZ: If I may approach with the

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 exhibit which has been marked as United States
2 Exhibit 8?

3 THE COURT: You may.

4 BY MR. UBALLEZ:

5 Q. I've handed the witness, Your Honor, what's
6 been marked and admitted as United States Exhibit 8.

7 Can you tell us generally what this thing
8 is?

9 A. This is a Galaxy Note, Samsung Galaxy Note
10 5.

11 Q. And you described the IMEI number being the
12 number which identifies a specific device?

13 A. That's correct.

14 Q. And do you see an IMEI number on this
15 device?

16 A. It's usually in the back of the phone. You
17 would have to take the phone apart to do it,
18 underneath the battery.

19 Q. Could you take a quick look at the back and
20 see if we can see that number?

21 A. You'd have to open it up.

22 Q. Just the back of the case.

23 A. There is no number on the back of the case.

24 Q. The back of the case or the phone, my
25 apologies.

1 A. If there is a number on here, it's very,
2 very small and I can't see it. There is a number on
3 the bottom down here.

4 Q. Okay. Can you -- and that number on the
5 bottom there, does it look the length of an IMEI
6 number?

7 A. It could be, yes, sir.

8 Q. But it's too small for you to see?

9 A. Yes. I have a Samsung phone, myself, but I
10 never take it out of my case to look at the back of
11 it. I usually have the box with my phone, and I have
12 my IMEI number on my box.

13 Q. Is there an indication where an IMEI number
14 might be on a physical device?

15 A. It would also be behind the battery, if you
16 take the battery out of a phone.

17 MR. UBALLEZ: May I retrieve, Exhibit 8,
18 Your Honor?

19 THE COURT: You may.

20 A. But to be honest with you, I can't see it.

21 BY MR. UBALLEZ:

22 Q. So you're describing, then, the subscriber
23 information on page 3 of Exhibit 5?

24 A. That's correct.

25 Q. Under "billing details," what type of

1 information is contained here?

2 A. The bill name. The name is Michael
3 N-I-S-S-E-N.

4 Q. Does that include any identifiers for that
5 individual?

6 A. The birth date, 3/8 of 1965.

7 Q. And also a social?

8 A. Social Security number. There is an
9 address, bill address.

10 Q. Why do you keep these items of information?

11 A. That information -- this is a post date
12 account. In other words, a credit check was done so
13 the information was verified. This information is
14 actually entered in when the customer opens the
15 account.

16 Q. And why is that type of information
17 important to keep for T-Mobile?

18 A. Because number one, it's a post paid
19 account. A credit check was done so the information
20 was put on there. We also have prepaid accounts,
21 where a person's identity is not verified because
22 there is no credit check done. They pay as they go.
23 They pay monthly. You pay \$40 for 30 days of
24 service, you've got to pay another \$40 for the 30
25 days. If you don't pay, you don't get your phone

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 anymore.

2 Q. So it would be important for this
3 information to be current, then?

4 A. Yes. On this particular account, this is a
5 post pay account. A credit check was done and that
6 information was there and that person pays by the
7 month.

8 Q. So we're absolutely clear, without the
9 switch that you identified in Plano, Texas, these
10 calls made from this number with this subscriber
11 would not have gone to the people, whoever it was,
12 that he was calling?

13 A. That's right. On this particular instance,
14 that switching station was the switching station that
15 facilitated the calls, and the call detailed records
16 that you have in front of you.

17 MR. UBALLEZ: If I may have a moment, Your
18 Honor?

19 THE COURT: You may.

20 MR. UBALLEZ: Pass the witness.

21 THE COURT: Thank you, Mr. Uballez.

22 Mr. Mkhitarian, do you have
23 cross-examination for Mr. Lecesne?

24 MR. MKHITARIAN: Yes, Your Honor.

25 THE COURT: Mr. Mkhitarian.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
A
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 MR. MKHITARIAN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MKHITARIAN:

4 Q. Good afternoon, sir.

5 A. Good afternoon sir.

6 Q. How do you pronounce your last name, again?

7 A. Lecesne. It's a New Orleans name.

8 Q. Thank you, Mr. Lecesne, for being here
9 today. I'm going to keep it really short. So you
10 had talked about earlier how you're not an engineer,
11 and I'm going to hold you to that.

12 A. Right.

13 Q. So I'll just try to keep it within your
14 knowledge base. So you testified earlier that when
15 you make a phone call, it goes to a switch. Do all
16 phone calls go to a switch?

17 A. When you make or receive a phone call on a
18 T-Mobile network, there is going to be a switch that
19 handles the call. We have switches all over the
20 country. The switch has no bearing on where the
21 phone is. The tower information will tell you where
22 the phone is, but the switching -- the switching
23 station, which is a computer, facilitates that call.

24 Q. So is it entirely possible to -- for
25 instance, if you lived in Plano, Texas, and you made

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 a T-Mobile phone call, will that phone call go to
2 that Plano, Texas, switch because it's the nearest
3 one, or is it completely random on where these go?

4 A. It's computerized. It could be on a switch
5 in New York City. It could be on a switch in
6 Atlanta. That's the GSM network. There used to be a
7 CDMA network and you had to be -- when you used your
8 phone, which the CDMA network is not working anymore;
9 we discontinued that on T-Mobile in Metro PSC. You
10 would have to use the Dallas switch to make a phone
11 call in Dallas.

12 Q. Okay. So based on the current technology,
13 even if there is a switch where you live and you use
14 the Dallas example, so there is a switch in Dallas,
15 you make a phone call from a Dallas number to a
16 Dallas number, that phone call could still go to New
17 York?

18 A. It could go to a different switch. But
19 that has no bearing on where the phone is.

20 Q. I understand. So the phone call could go
21 to a different switch regardless if there's a
22 switch -- you're making a phone call next door to the
23 switch, it could still go to a different switch.

24 A. That's correct. The record would only show
25 what happened. It would not show something that

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 didn't happen.

2 Q. Is it common knowledge that these phone
3 calls could go to different switches?

4 MR. MYSLIWIEC: Objection, relevance.

5 THE COURT: Overruled.

6 BY MR. MKHITARIAN:

7 Q. Is it common knowledge that your phone
8 call --

9 A. I've seen it happen in many different
10 situations. I've seen phone calls in Dallas on a GSM
11 network that use a switch in California. The
12 switching station is a computer that facilitates the
13 completion of the call.

14 Q. So even if you call a local number and
15 there's a local switch, the phone call can go to any
16 switch?

17 A. It goes to any switch that's available at
18 that time.

19 Q. Does your phone tell you it's going to a
20 different switch when you're actually making the
21 call, or is it something you find out later?

22 A. No, sir. You won't find it out unless you
23 get the call detail records. Your phone doesn't tell
24 you that.

25 Q. Oh. Does your phone bill tell you that?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. No, sir, it doesn't.

2 Q. Is that something that you have to subpoena
3 to find out?

4 A. An individual can't subpoena their own
5 records because they get billing records. They'd
6 have to get an attorney. But you could get it with a
7 subpoena. The Government has to have certain types
8 of call detail records with tower information. With
9 the information that you saw on this, on those call
10 detail records, they could only get it with a search
11 warrant.

12 Q. So I guess with that in mind, I'll kind of
13 boil it down. So a customer in the regular course of
14 making phone calls and getting bills might not ever
15 find out that his phone call went to a switch
16 somewhere else?

17 MR. MYSLIWIEC: Objection, relevance.

18 THE COURT: Overruled.

19 A. No. I have a T-Mobile phone and I never
20 requested my call detail records to find out which
21 switch handled my calls. I just make my calls. As
22 long as my phone is working right, I'm fine.

23 BY MR. MKHITARIAN:

24 Q. If I was a T-Mobile customer, could I call
25 them and say, "Make sure none of my phone calls go to

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Texas"?

2 A. No, sir, I don't believe that's possible,
3 because the store has nothing to do with the tower
4 information and the call detail records.

5 MR. MKHITARIAN: May I have a moment, Your
6 Honor?

7 THE COURT: You may.

8 MR. MKHITARIAN: I'll pass the witness.

9 THE COURT: Thank you, Mr. Mkhitarian.

10 Mr. Uballez, any redirect of Mr. Lecesne?

11 MR. UBALLEZ: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. UBALLEZ:

14 Q. Would it be possible to use a T-Mobile
15 network without passing through the system of
16 switches which are national that you've described to
17 us today?

18 A. That would not be possible.

19 MR. UBALLEZ: No further questions.

20 THE COURT: Thank you, Mr. Uballez.

21 All right. Mr. Lecesne, you may step down.

22 Is there any reason Mr. Lecesne cannot be
23 excused from the proceedings, Mr. Uballez?

24 MR. UBALLEZ: No, Your Honor.

25 THE COURT: Mr. Mkhitarian.

1 MR. MKHITARIAN: No, Your Honor.

2 THE COURT: All right. You are excused
3 from the proceedings. Thank you for your testimony.

4 THE WITNESS: Thank you, sir.

5 THE COURT: All right. Does the Government
6 have its next witness or evidence, Mr. Uballez?

7 MR. UBALLEZ: Yes, Your Honor. The United
8 States calls Sergeant Steven Carroll with New Mexico
9 State Police.

10 THE COURT: Mr. Carroll, if you'll come up
11 and stand next to the witness box on my right, your
12 left, before you're seated, my courtroom deputy
13 Ms. Wright, will swear you in.

14 STEVEN CARROLL,
15 after having been first duly sworn under oath,
16 was questioned, and testified as follows:

17 THE CLERK: You may be seated.

18 THE COURT: Mr. Carroll, Mr. Uballez.

19 MR. UBALLEZ: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. UBALLEZ:

22 Q. Please introduce yourself to the jury and
23 where you work and what your role is there.

24 A. My name is Steven Carroll. I'm a sergeant
25 with the New Mexico State Police, stationed out of

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 our District 5 office here in Albuquerque, New
2 Mexico.

3 Q. Where is District 5?

4 A. It's our Albuquerque office.

5 Q. And what are your responsibilities as a
6 sergeant with the State Police?

7 A. So I'm a patrol sergeant, so I supervise
8 five officers. I also deal with our daily -- part of
9 our role as a supervisor is also to deal with
10 complaints coming in from citizens, also dealing with
11 approving reports, responding to critical incidences,
12 and anything else that might happen during the day of
13 our shift.

14 Q. Do you do basic routing and calling of
15 officers when they call in traffic stops?

16 A. No, I don't do that.

17 Q. How long have you been with the State
18 Police?

19 A. I've been employed with the New Mexico
20 State Police now a little over 11 years.

21 Q. And any prior law enforcement?

22 A. No, sir.

23 Q. And when did you become a sergeant?

24 A. I promoted to the rank of sergeant in
25 August of 2014.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Q. I want to ask you, then, about a series of
2 events on November 2 of 2018. Do you recall that
3 date?

4 A. Yes, sir.

5 Q. And were you a New Mexico State Police
6 sergeant with District 5 on that date?

7 A. Yes, I was.

8 Q. What shift were you working?

9 A. I was working the swing shift, which are
10 the hours of 4:00 p.m. to 1:00 a.m.

11 Q. And were your duties then similar to the
12 ones you just described to us today?

13 A. Yes, sir.

14 Q. Do you recall being brought into a
15 conversation with an individual identified as
16 Mr. Nissen?

17 A. I was, yes.

18 Q. How were you brought into that?

19 A. One of our dispatchers, a dispatcher whose
20 name is Victoria Gurule, informed me that Mr. Nissen
21 wanted to complain on an Officer Burd.

22 Q. Did you specifically identify Officer Burd
23 as that person that the complaint was about?

24 A. Yes.

25 Q. Is it standard for you take calls from

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 civilians?

2 A. Yes, it is.

3 Q. And so what did you do?

4 A. I contacted the complainant, Mr. Nissen,
5 over the phone.

6 Q. Did you speak with him?

7 A. Yes, I did.

8 Q. And describe the things that he said to you
9 during that conversation.

10 A. So it was back in November, and again, I
11 don't recall the specific conversation, the specific
12 wording. Mr. Nissen, however, was fairly upset over
13 the traffic stop that Officer Burd initiated on him
14 and wished to complain on Officer Burd.

15 Q. How could you tell that he was upset?

16 A. His voice was raised, his tone was
17 aggressive. And again, I don't recall specific words
18 that were exchanged between myself and Mr. Nissen,
19 but it was apparent that Mr. Nissen was upset.

20 Q. Did Mr. Nissen threaten you directly during
21 that call?

22 A. Again, I don't recall specifically.

23 Q. If you recall.

24 A. I don't recall specifically Mr. Nissen
25 directly threatening myself, no.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Q. And during that call -- approximately how
2 long would you say you were on the phone with him?

3 A. It had to be less than five minutes.

4 Q. And what is your standard procedure for
5 receiving complaints in this manner as the sergeant
6 who takes complaints?

7 A. A typical complaint would be: The validity
8 of the complaint would be taken into consideration.
9 And again, if it turns out it's a legitimate
10 complaint, we do a formal complaint process. This
11 particular situation, I did not follow up on that
12 process.

13 Q. Why did you not follow up on that process?

14 A. The complaint, Mr. Nissen's complaint,
15 again, was more toward issuing the citations and how
16 the traffic stop was done, and those complaints can
17 be handled via the court process.

18 Q. Have you issued traffic citations yourself?

19 A. Yes, sir.

20 Q. And you supervise officers who issue
21 traffic citations?

22 A. Yes, sir.

23 Q. And been to court yourself?

24 A. Yes, sir.

25 Q. Describe that process.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. Going to court? By going to court, again,
2 you're not guilty. By going to court, you have the
3 opportunity to present evidence in front of a judge
4 or jury. The officer has the opportunity to present
5 evidence in front of a judge and jury, and the
6 independent judiciary system makes a determination
7 whether the defendant is guilty or innocent.

8 Q. So when you said you didn't initiate a
9 formal complaint process within State Police, it was
10 because there was a court process to handle the
11 complaints --

12 A. Correct.

13 Q. -- as you understand it?

14 A. Correct.

15 Q. Did you advise Mr. Nissen of this fact?

16 A. I don't believe so. I don't recall.

17 Q. But did you take his complaints?

18 A. I did. I listened to him.

19 Q. Did you threaten Mr. Nissen?

20 A. Not that I'm aware, no, sir.

21 Q. I'm going to play for you what's been
22 marked and admitted as United States' Exhibit Number
23 2, and I want you to tell me if you recognize this
24 voice.

25 (Audio played.)

1 Q. Start with that first one. Whose voice is
2 that?

3 A. That's our dispatcher, Victoria Gurule.
4 (Audio played.)

5 Q. Can you identify that voice?

6 A. Yeah, that voice sounds familiar to the
7 voice I talked to over the phone on November 2.

8 Q. Were those complaints relating to the
9 Constitution and the violation of his rights
10 consistent with those that were being made to you?

11 A. Again, I don't directly recall a
12 conversation, but it sounds familiar.

13 Q. After you took his complaints, did you have
14 any further interactions? Well, on that day, did you
15 have any further interaction with Mr. Nissen?

16 A. No.

17 MR. UBALLEZ: May I have a moment, Your
18 Honor?

19 THE COURT: You may.

20 BY MR. UBALLEZ:

21 Q. After receiving -- in addition to speaking
22 with Mr. Nissen, did you speak with anyone else about
23 their interactions with Mr. Nissen?

24 A. So I did speak to Ms. Gurule.

25 Q. Did you speak with Officer Burd, as well?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. I did speak to Officer Burd. Afterwards
2 they relayed threats that were given, and I actually
3 pushed out an email warning the whole district as a
4 whole about the threats that were relayed over the
5 phone.

6 Q. Describe that email.

7 A. ~~The email~~ was basically a warning email to
8 all the officers stating, again, with the threat of
9 putting -- shooting a pig with a gun, and just to be
10 on the lookout, be a warning; so I put Mr. Nissen's
11 information on the email so in case any other officer
12 had contact with him, just to be aware.

13 Q. Is that standard procedure every time you
14 receive a complaint?

15 A. No.

16 Q. Have you heard the term "pig" before?

17 A. Yes.

18 Q. And what's your understanding that it
19 refers to?

20 A. So besides the obvious fact of the pig, of
21 the animal variety, "pig" is also very common slang
22 to describe a law enforcement officer.

23 MR. UBALLEZ: Thank you. I pass the
24 witness, Your Honor.

25 THE COURT: Thank you, Mr. Uballez.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

*Statutory
written
law,
summarized
yet again*

1 Mr. Mkhitarian, do you have
2 cross-examination of Mr. Carroll?

3 MR. MKHITARIAN: Thank you, Your Honor.

4 THE COURT: Mr. Mkhitarian.

5 CROSS-EXAMINATION

6 BY MR. MKHITARIAN:

7 Q. Good afternoon.

8 A. Hello, sir.

9 Q. You testified earlier that you don't recall
10 being threatened by Mr. Nissen; is that correct?

11 A. Correct.

12 Q. That would be something you would remember,
13 if someone threatened your life; right?

14 A. Yes, sir.

15 Q. So would it be fair to say that he did not
16 threaten you?

17 A. Correct.

18 Q. You also mentioned that when he was calling
19 to complain, he was talking about the Constitution
20 and things like that; is that correct?

21 A. I don't think I said -- specifically I said
22 Constitution, but I think I said his tone was
23 agitated. I don't specifically recall the exact
24 conversation I had with Mr. Nissen.

25 Q. Okay. So he was -- would you describe the

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 way he was talking you to as maybe ranting about the
2 stop?

3 A. It's possible.

4 Q. And would you say that -- when you said
5 that you determined it wasn't a real complaint but
6 something suited for the courts, is that because he
7 was arguing about the law and things like that with
8 you over the phone?

9 A. Again, that's possible, yes, sir.

10 Q. So based off of him calling you and arguing
11 about the law, you felt that it wasn't a real
12 complaint, and his complaints should be directed for
13 the court process?

14 A. Yes, sir.

15 Q. But it is true that he was trying to
16 educate you on what he thought the officer should
17 have done. Did I hear that correctly?

18 A. Possibly, yes, sir.

19 Q. And after you concluded the phone call, how
20 long after you concluded the phone call did you talk
21 to Ms. Gurule and Officer Burd?

22 A. Probably within -- it had to have been
23 within 10 to 15 minutes. It wasn't a long period of
24 time.

25 Q. Okay. And at that time did you -- within

1 10 to 15 minutes of that time, were you notified that
2 there was a threat or was it some other call at a
3 later time?

4 A. It was during that time, yes, sir.

5 Q. After your phone call to Mr. Nissen, did
6 you feel it necessary to, immediately after your
7 contact with him, notify everybody that there was a
8 threatening individual?

9 A. After my phone call, no, sir.

10 Q. It was only after talking to dispatch that
11 you decided to make that communication; is that
12 correct?

13 A. Yes, sir.

14 MR. MKHITARIAN: I'll pass the witness.

15 THE COURT: Mr. Mkhitarian.

16 Mr. Uballez, any redirect of Mr. Carroll?

17 MR. UBALLEZ: No follow-up.

18 THE COURT: All right, Mr. Carroll, you may
19 step down.

20 Mr. Uballez, is there any reason that
21 Mr. Carroll cannot be excused from the proceedings?

22 MR. UBALLEZ: No, Your Honor.

23 THE COURT: Mr. Mkhitarian, can Mr. Carroll
24 be excused?

25 MR. MKHITARIAN: Yes, Your Honor.

*a stem
of a Carroll
of an
innocent
man*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 THE COURT: All right. You're excused from
2 the proceedings. Thank you for your testimony.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: All right. Does the Government
5 have its next witness or evidence?

6 MR. MYSLIWIEC: Yes, Your Honor. The
7 United States calls Barbara Beuzekom of the New
8 Mexico State Police.

9 THE COURT: Ms. Beuzekom, if you'll come up
10 and stand next to the witness box on my right, your
11 left, before you're seated, my courtroom deputy,
12 Ms. Bevel, will swear you in.

13 BARBARA BEUZEKOM,
14 after having been first duly sworn under oath,
15 was questioned, and testified as follows:

16 THE CLERK: Thank you. You may be seated.
17 All right, Ms. Beuzekom, Mr. Mysliwicz.

18 DIRECT EXAMINATION

19 BY MR. MYSLIWIEC:

20 Q. Ma'am, have I been pronouncing your name
21 correctly? Beuzekom?

22 A. Yeah.

23 Q. Okay. Now that you've been sworn in, could
24 you please introduce yourself to the jury by telling
25 them your name, occupation, and current assignment?

1 A. My name is Barbara Beuzekom. I work at the
2 New Mexico State Police office on Carlisle, which is
3 District 5, and I'm a district administrator.

4 Q. And how long have you been a district
5 administrator?

6 A. Five years.

7 Q. Was that your job right out of school, or
8 did you do something before that?

9 A. I worked for nine years for APS Police as a
10 campus security at one of the high schools.

11 Q. So you were essentially a police officer
12 for some time? Can you answer yes?

13 A. Not really. I mean, I was campus security.
14 We did have arresting capabilities. I mean, I don't
15 know how to say it. We patrolled the campuses. We
16 had search privileges. We had basically anything
17 that went on for the school in security.

18 Q. Were you trained on how to interact with
19 people while respecting their rights?

20 A. Yes.

21 Q. And what are your duties now that you're an
22 administrator with the New Mexico State Police?

23 A. I'm first contact with the public over the
24 phone or that come into our office, and decide best
25 ways to help them and do what they need.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Q. If I dial (505) 841-9256, is that dispatch?

2 A. That is the main number that comes in, and
3 it gives you a list of options to hit, 1 through, I
4 believe, 8, whether it's dispatch, investigations,
5 administrators, or fingerprinting, whatever you need.

6 Q. What do I select to get you?

7 A. I believe it says for uniform
8 administration you push whatever -- I'm not sure what
9 number. It's changed recently.

10 Q. So the automated voice is not lying when it
11 says, "Please listen because the numbers have
12 recently changed"?

13 A. Yes.

14 Q. Are all phone calls that go to you through
15 that selection process recorded?

16 A. No.

17 Q. Did you ever have a phone conversation with
18 a person named Michael Nissen?

19 A. Yes.

20 Q. Can you identify whether you see Michael
21 Nissen in the courtroom today or not?

22 A. I can't see.

23 Q. I'll step out of your way. I'm --

24 A. He's wearing a blue shirt, at the end of
25 the table over there.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 MR. MYSLIWIEC: Your Honor, may the record
2 please reflect that the witness has identified the
3 defendant?

4 THE COURT: The record will so reflect.
5 BY MR. MYSLIWIEC:

6 Q. Can you tell us if you recall what day you
7 had that phone call with him on?

8 A. Without looking at notes, no. I don't
9 remember the exact date.

10 Q. If I showed you on this screen a call
11 record -- we're going to plug this computer in. Do
12 you see these calls on November 26 of 2018 and then
13 November 27 of 2018?

14 A. Yes.

15 Q. Does that refresh your recollection as to
16 when you actually talked to Mr. Nissen?

17 A. I talked to him on -- I would say there was
18 one day that I talked to him, and then he called the
19 next day, also, but I did not speak with him.

20 Q. Do you think it was the 26th of November?

21 A. Probably. It was in the morning.

22 Q. And at least reasonably near, in terms of
23 the jury instruction, reasonably around November 26,
24 2018?

25 A. Definitely.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Q. Could you describe to the jury how that
2 phone call went?

3 A. I answer in my usual way and I ask if there
4 is anything I can do for whoever is calling. And the
5 gentlemen said that he needed to speak to a
6 supervisor. And when I started asking him what it
7 was he needed to speak to, he became -- his voice got
8 very angry. He got very loud. He proceeded to tell
9 me that if -- you know, he would just come down to
10 the office and shoot me in my fucking face.

11 Q. When you told him you needed more
12 information, were you being genuine with him?

13 A. Definitely. Because we have a chain of
14 command where it can be about an officer. Each
15 officer has a sergeant, which follows up another
16 chain of command. So it's just a procedure on who we
17 put the phone call to.

18 Q. What information would you need -- if I
19 called you and said, "I want to complain about a
20 traffic stop that happened to me a little while ago,"
21 what would you need from me to know which supervisor
22 to route me to?

23 A. The person's name that was stopped, the
24 area that they were stopped in, depending if it was
25 Albuquerque, Cuba, Los Lunas, East Mountains.

no record
of all calls
typed and
recorded
-
perjury.
she has
3 other
statements
- discovery

1 Q. And is that the type of information you
2 attempted to get from this caller on the 26th of
3 November, 2018, who you now know to be Michael
4 Nissen?

5 A. Yes.

6 Q. Like I said, I'll just ask again, were you
7 being genuine in trying to get that info to attempt
8 to help him?

9 A. Yes, because I was not familiar who he was,
10 so I just needed his name.

11 Q. Could you describe to me how long it took
12 between you asking that question trying to help him
13 and this escalation of his voice that you described?

14 A. I would say I didn't even get out of him
15 where the location of the traffic stop was, so it was
16 a very short period of time.

17 Q. Would you describe the escalation of his
18 volume and his voice as gradual or sudden?

19 A. It escalated very quickly.

20 Q. And I don't remember exactly the words that
21 you used, but do you remember exactly the words that
22 Mr. Nissen used to say things that you considered a
23 threat?

24 A. That he was going to come shoot me in my
25 fucking face.

1 Q. And was there anything that he said that
2 made you believe that he was joking?

3 A. No.

4 Q. Was there anything that he said that made
5 you believe that he was being figurative or not
6 serious?

7 A. I took it completely serious, and proceeded
8 to go get someone else to talk to him.

9 Q. Do you go get someone else to talk to every
10 caller who has a complaint about police action?

11 A. No.

12 Q. What's the difference between a complaint
13 you receive that you don't go get someone else to
14 finish the phone call and a complaint you receive
15 where you would do that?

16 A. Typically people -- when you start talking
17 to them and trying to -- telling them that you're
18 just trying to help them, that they'll come through
19 with the information that you need to be able to find
20 their citation, to find what they're looking for.
21 There was absolutely no way that he would let me even
22 get to the point of saying, "I'm just trying to help
23 you."

24 Q. You described to the jury just now that
25 there was some profanity that Mr. Nissen used on the

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
Q ASSOCIATES, Inc.
A
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 phone call. Was it the profanity that you made you
2 feel threatened?

3 A. No, it was just the intensity of his voice.
4 I mean, he was very angry. I just got the impression
5 that there was no way he was going to listen to
6 anything that I had to say.

7 Q. If he in a loud voice had not said the part
8 about shooting you in your face, but was just loud in
9 his complaints about whatever it was, would you have
10 considered that a threat?

11 A. No.

12 Q. So just so the jury understands what you
13 were thinking at the time and only what was inside
14 your own mind, it was the threat to shoot you in the
15 face that was the thing that was threatening?

16 A. Yes.

17 Q. Now, do you remember who it was that you
18 got to handle the rest of the call?

19 A. I went to the squad room and Officer Juan
20 Cordova was in the squad room, and I asked him to
21 come handle the phone call.

22 Q. And did you take any action after passing
23 that call to Mr. Cordova with respect to Nissen and
24 what he said to you?

25 A. The -- I took -- since it was a threat and

1 I felt threatened, I took the number, the phone
2 number, off of my caller ID so that if the person
3 called back in, I would know that that was Mr. Nissen
4 immediately calling back in.

5 Q. And did you request authorization to put a
6 poster up by administrative workers' work stations so
7 that if he did hypothetically come by, the person
8 working there would be warned?

9 A. Yes.

10 Q. And did you receive the authority to put
11 Mr. Nissen's face on a poster that was posted in your
12 office to warn people in the case that he might come
13 by in the future?

14 A. Yes. That day I asked my captain, after
15 reading the traffic stop and finding that it was just
16 traffic citations that he was angry about, then I
17 asked my captain if it was all right to get that
18 picture to put up by the stations that have an
19 intercom phone.

20 Q. And you did receive the authority to put
21 the warning up?

22 A. Yes.

23 Q. And do you do that with everybody who
24 curses on the phone?

25 A. No.

1 Q. Do you do that with everyone who speaks in
2 a loud voice on the phone?

3 A. No.

4 Q. Was it because of the threats or anything
5 else?

6 A. The threats.

7 MR. MYSLIWIEC: No further questions.

8 THE COURT: Thank you.

9 Mr. Mkhitarian, do you have
10 cross-examination of Ms. Beuzekom?

11 MR. MKHITARIAN: Thank you, Your Honor.

12 THE COURT: Mr. Mkhitarian.

13 CROSS-EXAMINATION

14 BY MR. MKHITARIAN:

15 Q. Now, is it Ms. Beuzekom? Is that how you
16 pronounce it?

17 A. Yes.

18 Q. Ms. Beuzekom, did you ever have a chance to
19 meet Mr. Nissen prior to that phone call?

20 A. No.

21 Q. How about after that phone call?

22 A. Did I ever meet him? No.

23 → Q. How did you come to recognize the way he
24 looks?

25 A. From the picture that was printed out that

*Discovery
clearly
shows all
says this
involvement
is lying*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 I had asked my captain for that day of the threat.

2 Q. And was that printed from a driver's
3 license picture or something like that?

4 A. Yes.

5 Q. But you never actually saw Mr. Nissen in
6 person; is that correct?

7 A. No.

8 Q. Now, you mentioned that the call tone
9 escalated quickly. Did I hear that correctly?

10 A. Yes.

11 Q. Did Mr. Nissen complain about his rights in
12 any part of that phone call?

13 A. Not really to me. I don't believe he did.

14 Q. Was he complaining about the stop?

15 A. Yes, he just said he needed to talk to a
16 supervisor.

17 Q. And when he was -- and when you were asking
18 him why he needed to speak to somebody, is that when
19 you got the response?

20 A. Yes.

21 Q. And did you ever transfer him to a
22 supervisor?

23 A. No.

24 Q. Did he ever hash out his complaint with
25 you?

*she clearly
stated
she wanted
the call
over to
a supervisor*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. No.

2 Q. Do you have the means to record a phone
3 call at your desk?

4 A. No.

5 Q. Do you have the means to, I guess, notify
6 someone to record a phone call or anything like that?

7 A. I believe there is. They since then have
8 requested a recorded line, but I don't know if it's
9 in place yet.

10 Q. But you didn't have one at the time?

11 A. No.

12 Q. And when you mentioned that you had gone
13 and got someone else to talk to him, who did you go
14 get to talk to him?

15 A. An officer.

16 Q. And was that officer assigned to, I guess,
17 talk to escalated calls or was it just an officer
18 that you found in the office?

19 A. He was in the office, in the squad room,
20 doing a report at the computer station. So that's
21 who I went and got.

22 Q. And that's not necessarily his job. It's
23 just that you secured the nearest officer you could
24 find?

25 A. Yes.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Q. Now, was Mr. Nissen complaining about
2 police in general during this phone call?

3 A. He never got around to really exactly what
4 it was he was wanting. He accepted to talk to a
5 supervisor. So he didn't actually articulate to me
6 what his concerns were, what the problem was.

7 Q. How long would you say the phone call was
8 in minutes, seconds, to the best of your knowledge?

9 A. I would say maybe 30 to 45 seconds.

10 Q. So basically he called, asked for a
11 supervisor, you asked him why, he threatened to shoot
12 you, and that was the end of the phone call?

13 A. On my part. I went and got the officer and
14 the officer finished the phone call.

15 Q. Okay. Were you -- was the phone on speaker
16 when the officer was talking to him?

17 A. When Officer Cordova was speaking to him?

18 Q. Right.

19 A. I don't remember if he continued -- if it
20 was on speaker phone or if he talked directly.

21 Q. Did you hear the contents of that
22 conversation at all?

23 A. No, I didn't go back in the office, because
24 the phone is right up at the front window, so it was
25 kind of crowded.

1 Q. Just to the best of your knowledge, because
2 I know he wasn't speaking to you at that point, was
3 the officer you got threatened in any way?

4 A. I don't know.

5 Q. Now, once again, to the best of your
6 knowledge was Mr. Nissen anywhere near you when he
7 allegedly threatened you over the phone?

8 A. He was on the phone.

9 Q. Okay. Could you see where he was? Did you
10 know where he was?

11 A. No. It was just a phone call.

12 Q. Did Mr. Nissen indicate that he was going
13 to come down and do it at a certain time?

14 A. No.

15 Q. Did he -- when you said that he threatened
16 to shoot you in the face, was that because you would
17 not get a supervisor or did he condition it on you
18 getting a supervisor?

19 A. He just -- I felt like it was just because
20 I questioned him. I was asking him questions.
21 That's why he got angry.

22 Q. And so roughly -- it was a very short phone
23 call after you received that communication from him;
24 your communication with him ended after you received
25 the threat, and you got the other officer, you

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 essentially stopped talking to him?

2 A. Correct.

3 Q. Did you talk to him at any time after that?

4 A. No.

5 MR. MKHITARIAN: If I may have a moment,
6 Your Honor?

7 THE COURT: You may.

8 BY MR. MKHITARIAN:

9 Q. Just to be clear, whenever someone calls
10 the New Mexico State Police phone number -- and I
11 believe the phone number that the United States said
12 was the 841-9256, is that the number that you know is
13 the State Police number?

14 A. It is.

15 Q. And there is an option to directly go to
16 you; is that correct?

17 A. Yes.

18 Q. And there is also one option to go to
19 dispatch? Do I understand that correctly?

20 A. Yes.

21 Q. So the phone calls to dispatch, to the best
22 of your knowledge, are recorded, but you don't know
23 if any of the other phone lines are recorded?

24 A. I don't believe they are, but I couldn't be
25 100 percent sure.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 MR. MKHITARIAN: Okay. I'll pass the
2 witness.

3 THE COURT: Thank you, Mr. Mkhitarian.

4 MR. MYSLIWIEC: May we approach, Your
5 Honor?

6 THE COURT: You may.

7 (The following proceedings were held at the
8 bench.)

9 MR. MYSLIWIEC: So our information is
10 that -- I didn't ask about this because of your
11 404(b) ruling. But our information is that
12 Ms. Beuzekom actually did come face-to-face with
13 Mr. Nissen on December 11 and what we have previously
14 talked in hearings about being the bomb scare date.
15 Now, I didn't ask about that on direct because of how
16 you ruled on 404(b). But now that Mr. Mkhitarian
17 asked questions to the tune of, "Did you ever see him
18 after that, have you ever met him in person," I need
19 to give her a chance to correct her testimony so
20 she's not in a perjury situation.

21 MR. MKHITARIAN: If she doesn't remember,
22 she doesn't remember. I don't think that's a perjury
23 situation. Of utmost concern here, I asked her, "To
24 the best of your knowledge."

25 THE COURT: Let me ask you this. Was there

*This lady is clearly fraudulent
false testimony & hidden evidence*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 anything you could ask to clean up this record that
2 would be more satisfactory than letting Mr. Mysliwiec
3 do it?

4 MR. MKHITARIAN: I could think about it.

5 THE COURT: What question would you ask?

6 MR. MKHITARIAN: I guess I could
7 respectfully ask Paul if this is a question he wants
8 me to ask that would clean it up.

9 MR. GLERIA: Can I weigh in on this?

10 THE COURT: Sure.

11 MR. GLERIA: Mr. Mysliwiec asked the
12 witness to identify Mr. Nissen, and I didn't object
13 because it didn't rise to -- I didn't want to
14 interrupt the proceedings. But I mean, that was a
15 reference to 404(b) information, because the lady had
16 only seen -- the witness had only seen the defendant
17 on December 11. He should have never asked her to
18 identify the witness and then in the same examination
19 ask if she ever met him.

20 THE COURT: Why don't we do this. Why
21 don't you -- "You answered my question that you
22 hadn't seen Mr. Nissen, but you identified him, but
23 you did see him at whatever" -- you want to fill in
24 the blank and let it go at that. That way it points
25 out why you're asking this question, and if --

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 MR. MKHITARIAN: I just want to be careful,
2 Your Honor, if I ask her, "Did you identify him from
3 the picture. You had also seen him, I guess one time
4 before."

5 MR. MYSLIWIEC: I would say, "Did you also
6 see him when he came to visit the office on December
7 11?" We don't talk about the flowers, we don't talk
8 about the bomb squad being called.

9 MR. GLERIA: I think that's unnecessary
10 because she testified that she recognized him from
11 the picture.

12 THE COURT: I don't want to get a witness
13 in trouble over this, and I think that's a perfectly
14 innocuous thing, and you get to ask the question to
15 clear it up.

16 MR. MKHITARIAN: Your Honor, just in due
17 caution, I don't know, because the witness hasn't
18 been instructed to not say anything about a bomb
19 threat or anything like that.

20 THE COURT: You lead her. Just say, "This
21 is a yes-or-no question." Just lead her.

22 MR. MKHITARIAN: And the date is December
23 11?

24 MR. MYSLIWIEC: Of the same year, 2018.

25 MR. GLERIA: Can we take a break after

*Wow
even the
judge is
feeling
this
file.*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES**, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 that?

2 THE COURT: Yeah, we'll take a break.

3 (The following proceedings were held in
4 open court.)

5 THE COURT: All right, Mr. Mkhitarian, do
6 you have another question?

7 MR. MKHITARIAN: Just to clear something
8 up.

9 BY MR. MKHITARIAN:

10 Q. Now, going back to the way you identified
11 Mr. Nissen, you had originally identified him by
12 driver's license photo; correct?

13 A. Be able to see who he was, yes.

14 Q. Now, a yes-or-no question. Is it also true
15 that you did see Mr. Nissen at the New Mexico Police
16 station on December 11, yes or no?

17 A. Did I see him on December 11?

18 Q. Correct. Did you see him in person, either
19 through video or in person, to the best of your
20 knowledge? Did you, yourself, witness Mr. Nissen
21 there?

22 A. I believe it was -- I'm not sure of the
23 date.

24 Q. Okay. But yes or no, did you also identify
25 him by seeing him in person?

1 A. Yes.

2 MR. MKHITARIAN: No further questions.

3 THE COURT: Thank you, Mr. Mkhitarian.

4 Mr. Mysliwicz, any redirect of --

5 MR. MYSLIWIEC: No, sir. Thank you.

6 THE COURT: All right. Ms. Beuzekom, you
7 may step down.

8 Is there any reason Ms. Beuzekom cannot be
9 excused from the proceedings, Mr. Mysliwicz?

10 MR. MYSLIWIEC: No, sir. Thank you.

11 THE COURT: Mr. Mkhitarian, can
12 Ms. Beuzekom be excused from the proceedings?

13 MR. GLERIA: Yes, Your Honor.

14 THE COURT: All right. You're excused from
15 the proceedings. Thank you for your testimony.

16 All right. I need to give Ms. Bean a
17 little bit of a break, so we're going to take a
18 15-minute break and then we're going to go about 25
19 minutes, and I'll try to get you out of here around
20 5:30. But I'd like to keep us moving here so we do
21 what we committed to you and get this case to you in
22 two days.

23 So we're taking actually our second break
24 during the Government's presentation of its case, but
25 I want to remind you of a few things that are

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 especially important. Until the trial is completed,
2 you're not to discuss this case with anyone, whether
3 it's members of your family, people involved in the
4 trial, or anyone else. And that includes your fellow
5 jurors. If anyone approaches you and tries to
6 discuss the trial with you, please let me know about
7 it immediately. Also, you must not read or listen to
8 any news reports of the trial. Don't get on the
9 internet and do any research for purposes of this
10 case. And finally, remember that you must not talk
11 about anything with any person who is involved in the
12 trial, even if it doesn't have anything to do with
13 the trial.

14 If you need to speak with me, simply give a
15 note to one of the court security officers or
16 Ms. Bevel or Ms. Wright. I'll probably repeat these
17 before we go home tonight, but if I don't at any time
18 in our breaks, do keep them in mind each time we do
19 take a break.

20 All right. We'll be in recess about 15
21 minutes, and then we'll work about another 25 and
22 then call it a day.

23 (The jury left the courtroom.)

24 THE COURT: All right. Anything we need to
25 discuss before we take our break? Anything else I

1 can do for you?

2 MR. MYSLIWIEC: I just want to let you
3 know, sir, we have Juan Cordova, who took the second
4 half of that phone call. Then I plan to call Peter
5 Ubbelohde from the FBI. It's already in evidence,
6 but to explain that Exhibit 8, which is the physical
7 phone, is indeed Mr. Nissen's phone and to read the
8 IEMI number off the back so that folks can see that
9 it matches the phone records. It will be very quick.

10 THE COURT: Anything else, Mr. Gleria?

11 MR. GLERIA: No, Your Honor.

12 THE COURT: All right. We'll be in recess
13 about 15 minutes.

14 (The Court stood in recess.)

15 THE COURT: All right. We'll go back on
16 the record. Anything we need to discuss before we
17 bring the jury in, Mr. Mysliwicz, Mr. Uballez?

18 MR. MYSLIWIEC: No, sir. We just have
19 those two witnesses left. Mr. Uballez is going to do
20 Officer Cordova. I don't know how many minutes, 10
21 minutes. Peter Ubbelohde from the FBI is just to
22 match up the phone to the unique number we see on the
23 phone records; maybe five minutes on direct.

24 THE COURT: Anything we need to discuss,
25 Mr. Gleria, Mr. Mkhitarian?

1 MR. GLERIA: No, Your Honor.

2 (The jury entered the courtroom.)

3 THE COURT: All right. Everyone be seated.

4 All right. Does the Government have its
5 next witness or evidence?

6 MR. UBALLEZ: Yes, Your Honor. The United
7 States calls New Mexico State Police Officer Juan
8 Cordova.

9 THE COURT: Mr. Cordova, if you'll come up
10 and stand next to the witness box on my right, your
11 left, before you're seated, my courtroom deputy,
12 Ms. Wright, will swear you in.

13 JUAN CORDOVA,
14 after having been first duly sworn under oath,
15 was questioned, and testified as follows:

16 THE CLERK: You may be seated. Thank you.

17 THE COURT: Mr. Cordova, Mr. Uballez.

18 MR. UBALLEZ: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. UBALLEZ:

21 Q. Good afternoon.

22 A. Good afternoon.

23 Q. If you could please introduce yourself to
24 the jury and let them know where you work, in what
25 capacity.

1 A. I'm Juan Cordova. I work for the New
2 Mexico State Police in Albuquerque.

3 Q. And what is your position with New Mexico
4 State Police?

5 A. I investigate crimes against children.

6 Q. And are you a sworn law enforcement
7 officer?

8 A. Yes, I am.

9 Q. How long have you been so?

10 A. About five and a half years.

11 Q. Any prior law enforcement experience?

12 A. No.

13 Q. And so where -- what region are you
14 assigned to?

15 A. District 5, which encompasses Albuquerque
16 metro and the surrounding areas.

17 Q. And what shift? We've been talking about
18 an incident in November of 2018. What shift were you
19 working back then?

20 A. Day shift.

21 Q. What are the hours of day shift?

22 A. 7:00 to 4:00.

23 Q. So I'm going to direct your attention to a
24 specific day, the 26th of that month. Do you recall
25 that date?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 A. Yes, I do.

2 Q. And do you recall an incident that involved
3 Mr. Nissen?

4 A. Yes, I do.

5 Q. And where were you when that incident came
6 up?

7 A. I was in the squad room in Albuquerque at
8 the District 5 office.

9 Q. And who came to you to bring you that
10 issue?

11 A. Barbara Beuzekom.

12 Q. And who is she?

13 A. She's an administrative assistant.

14 Q. And as a result of that interaction, did
15 you speak with Mr. Nissen?

16 A. Yes, I did.

17 Q. Did you call him yourself, or did you
18 receive the call?

19 A. When I walked into Ms. Beuzekom's office,
20 Mr. Nissen was on speaker phone.

21 Q. Did you observe the number from which he
22 was calling?

23 A. Yes, I did.

24 Q. On the phone. Do you recall that, off the
25 top of your head?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
Q ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

*Barbara's
statement
doesn't
match
this period.*

1 A. I don't recall it off the top of my head.

2 Q. Did you produce a report after your
3 interaction with Mr. Nissen?

4 A. Yes, I did.

5 Q. Was that closer in time to the actual
6 events, November 26, 2018?

7 A. Yes.

8 Q. And if you -- and did you record on that
9 report the specific number that he was calling from?

10 A. Yes, I did.

11 Q. And would reviewing a copy of that report
12 help refresh your recollection as to the specific
13 phone number?

14 A. Yes.

15 MR. UBALLEZ: If I may approach, Your
16 Honor?

17 THE COURT: You may.

18 BY MR. UBALLEZ:

19 Q. I'm going to ask you to review this report
20 and let me know once you're done reviewing it for
21 that phone number.

22 Did that help refresh your recollection?

23 A. Yes, it did.

24 Q. What is that?

25 A. (505) 819-1806.

1 MR. UBALLEZ: If I may approach the witness
2 again?

3 THE COURT: You may.

4 BY MR. UBALLEZ:

5 Q. Was that the number that you observed on
6 the screen on the phone saying what number the call
7 was coming from?

8 A. Yes.

9 Q. Was there also caller ID?

10 A. Yes.

11 Q. What did that show?

12 A. Michael Nissen.

13 Q. I'm going to play for you what's been
14 marked as and admitted United States Exhibit 4.

15 MR. UBALLEZ: And Your Honor, I'm going to
16 put on the screen for the jury what we've marked as
17 United States Exhibit 4-A, a demonstrative exhibit.

18 Q. And I want you to tell me who you hear in
19 this audio.

20 (Audio played.)

21 Q. There were two sets of hellos there. Who
22 is the first?

23 A. The first was me. And the second was
24 Mr. Nissen.

25 (Audio played.)

1 Q. Was that the call that you took on November
2 26, 2018, following your conversation with Barbara?

3 A. Yes.

4 Q. And those two individuals as you previously
5 identified were yourself and Mr. Nissen?

6 A. Yes.

7 Q. During the course of that phone call --
8 well, how was that phone call recorded?

9 A. It's recorded on my digital recorder that's
10 issued to me.

11 Q. Okay. So it wasn't through an automatic
12 system at the office?

13 A. No.

14 Q. And had you pulled over Mr. Nissen prior to
15 talking to him on November 26, 2018?

16 A. No.

17 Q. You're, in fact, in a different type of
18 investigation entirely; correct?

19 A. Yes.

20 MR. UBALLEZ: If I may have a moment, Your
21 Honor?

22 THE COURT: You may.

23 BY MR. UBALLEZ:

24 Q. And would you characterize anything that
25 Mr. Nissen told you during that recorded phone call

1 as a threat to you?

2 A. No.

3 MR. UBALLEZ: I'll pass the witness.

4 THE COURT: All right. Thank you,

5 Mr. Uballez.

6 Mr. Gleria, do you have --

7 MR. GLERIA: Is it okay, Judge?

8 THE COURT: Sure. Do you have
9 cross-examination of Mr. Cordova?

10 CROSS-EXAMINATION

11 BY MR. GLERIA:

12 Q. Is it Sergeant Cordova?

13 A. No, sir, it's officer.

14 Q. Officer Cordova?

15 A. Yes, sir.

16 Q. Officer Cordova, how is it that you came to
17 speak with Mr. Nissen on the phone?

18 A. I was in the squad room, and Barbara
19 Beuzekom came into the squad room, and asked me to
20 take over this phone call that she was on.

21 Q. So the same phone call is unrecorded when
22 she takes it; then suddenly, when you take the same
23 call on the same line, now it's recorded?

24 A. Whenever I have a conversation with
25 somebody, I turn on my own personal digital

*Lies
false
testimony
never
materialized*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 recording. So my recording begins when I start
2 recording that piece of the conversation.

3 Q. What did Barbara Beuzekom tell you? "Take
4 this call"?

5 A. She came into the squad room. She stated
6 to me that there was somebody on the phone that was
7 being -- and I don't recall specifically exactly the
8 wording that she said, but something to the effect
9 that he was being combative or he was being hostile,
10 and she appeared to be upset over this phone call.

11 Q. When you say "upset," why don't you
12 describe that. Was she crying? Was she shaking?
13 How was she upset?

14 A. So Barbara and -- I talk to Barbara every
15 day.

16 Q. I just asked you how she was upset. I
17 didn't ask you how --

18 A. She's a very bubbly person. She's always
19 smiling and laughing. And when she came in, her
20 demeanor was different on that day. She was not
21 smiling. She had a very blank stare, a very serious
22 look to her, which was different than what she
23 normally is.

24 Q. I just find it incredible that a simple
25 phone call --

1 MR. UBALLEZ: Objection.

2 THE COURT: Well, let's see if he asks the
3 question.

4 MR. GLERIA: It is a question, if you allow
5 me to ask it.

6 THE COURT: Hold on. Just ask the
7 question.

8 BY MR. GLERIA:

9 Q. I find it incredible that a single phone
10 call can be to a police station or a police
11 dispatcher, or whatever it is, can be partially
12 unrecorded, then recorded. Is that how it is at your
13 station?

14 A. I don't know which phones are recorded in
15 the station. I know that dispatch phones are and so
16 forth. But as far as what's recorded at the front
17 desk, just citizens calling in to the main number, I
18 don't know what the issue is with the recording
19 there. I just know that when I have contact with
20 citizens, I use my own digital recorder and record
21 that.

22 Q. You're using a personal phone?

23 A. It was a speaker phone in the office. It's
24 my own personal digital recorder that's issued to me.

25 Q. Is there a system in place now to record

He stated
his own
digital call
recorder
and now
its some
other
phone
franchise

1 calls?

2 A. I don't know that, sir.

3 Q. Now, when you spoke to Mr. Nissen -- I
4 mean, listening to the recording that we all heard,
5 he was complaining about his rights being violated;
6 is that right?

7 A. Yes, sir.

8 Q. He didn't threaten you, did he?

9 A. No, he didn't.

10 Q. Okay. And he didn't use any -- much
11 profanity; right?

12 A. He did.

13 Q. One time?

14 A. Correct.

15 Q. Okay. And you didn't take the call
16 seriously because you hung up on him; isn't that
17 right?

18 A. I did hang up on him.

19 Q. You hung up on him. You didn't take it
20 seriously. You kept asking, "How can I help you?"
21 Right?

22 A. Once. And what I stated to him was, "If
23 you continue to cuss at me, I'm going to hang up the
24 phone." He starts calling us thugs, and so forth.
25 That's just -- I hung up the phone on him.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Q. You didn't think it was a serious call?

2 A. I hung up on him when he started cussing
3 and saying -- calling me -- saying the police are
4 thugs.

5 Q. Okay. Well, he cussed one time. I mean,
6 this is one of the more lengthy recordings that we
7 have. It's like four pages on the transcript. So he
8 said the word "fuck" one time; right? That's it. He
9 didn't repeat it over and over; right?

10 A. Correct. He said it one time.

11 Q. Okay. And you kept asking toward the end,
12 "What is it -- why are you calling?" Right?

13 A. Yes.

14 Q. "What can I do for you?" And then you hung
15 up; right?

16 A. Yes.

17 Q. Isn't it fair to say that you didn't take
18 this call seriously; right?

19 A. No, that's not fair to say.

20 Q. That's not fair?

21 A. No.

22 Q. Did you contact some other higher-up at
23 your -- in the police station to look into this?

24 A. Yes, I did.

25 Q. You did? Who did you contact?

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@hlsupport.com

1 A. I researched if anybody else had contact
2 with this person, and learned that another officer
3 did have contact with this person, and I added a
4 supplemental to their -- to his report, and I learned
5 that there was ongoing involvement with this person
6 with regards to the other officer.

7 Q. Okay. And you don't know where Mr. Nissen
8 was; isn't that right?

9 A. During the phone call, sir?

10 Q. Yes.

11 A. No, I did not.

12 Q. He separated -- it's a phone call; right?
13 I mean, he's in one place, you're at your office?

14 A. Yes, sir.

15 Q. And the main message that he had was that
16 he got stopped for no good reason; isn't that right?
17 I mean, isn't that what he said repeatedly?

18 A. Yes.

19 Q. One page after another on this transcript?

20 A. Yes.

21 Q. Didn't he tell you, quote, "What I'm trying
22 to do is educate you guys because you can't just pull
23 people over for no God good reason"?

24 A. Yes, that is what he said.

25 Q. Okay. And he also referenced his -- the

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 violation of his constitutional rights. Isn't that
2 also something he said more than once?

3 A. I believe so.

4 Q. And then he complained about having to go
5 to court to prove his innocence. So you heard the
6 call; is that right?

7 A. Yes.

8 Q. There's nothing threatening about it.

9 A. He didn't threaten me, sir.

10 MR. UBALLEZ: Okay. If I could just have a
11 moment, Your Honor?

12 THE COURT: You may.

13 MR. GLERIA: No further questions.

14 THE COURT: Thank you, Mr. Gleria.

15 Mr. Uballez, do you have redirect of Mr.
16 Cordova?

17 REDIRECT EXAMINATION

18 BY MR. UBALLEZ:

19 Q. Why did you take this call?

20 A. I took this call because I was on duty and
21 I was present, and I was the only officer, I believe,
22 that was immediately available in the squad room.

23 Q. When you asked Mr. Nissen what you could do
24 to help him, did that come from a genuine interest in
25 how you could help him?

1 A. Yes.

2 Q. When you're describing Barbara, you were
3 about to say something about interacting with her
4 every day. I'd like you to complete that?

5 A. My interaction with Barbara -- she's a very
6 bubbly person. She's always smiling, and that's
7 generally -- that's her character. She's always
8 laughing and just smiling, and she's generally happy.
9 And my interaction that day was different, in that
10 when she came in, I observed that she had a very
11 blank stare about her, she had a very serious
12 demeanor about her, and she was coming in
13 specifically wanting help. She looked to me that she
14 was in distress, that something was going on,
15 different than my normal interaction with her.

16 Q. What did she tell you?

17 A. She stated to me that there was a person on
18 the phone that was becoming combative with her. And
19 I don't want to use the word "combative," but that's
20 from -- what I remember, that's what she was saying,
21 that this person was upset, was becoming combative
22 with her, and he threatened to shoot her in the head.

23 MR. UBALLEZ: If I may have a moment, Your
24 Honor?

25 THE COURT: You may.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 MR. UBALLEZ: No further questions.

2 THE COURT: Thank you, Mr. Uballez.

3 Anything else, Mr. Gleria?

4 MR. GLERIA: No, Your Honor.

5 THE COURT: All right. Mr. Cordova, you
6 may step down.

7 Is there any reason that Mr. Cordova cannot
8 be excused from the proceedings, Mr. Uballez?

9 MR. UBALLEZ: No, Your Honor.

10 THE COURT: Mr. Gleria, can he be excused?

11 MR. GLERIA: Yes, Your Honor.

12 THE COURT: All right. You're excused from
13 the proceedings. Thank you for your testimony.

14 Well, what do you think?

15 MR. MYSLIWIEC: Very quick witness. Last
16 witness.

17 THE COURT: How quick?

18 MR. MYSLIWIEC: I need him to read a number
19 off the back of this phone.

20 THE COURT: All right.

21 MR. MYSLIWIEC: The United States calls
22 Peter Ubbelohde of the FBI.

23 THE COURT: Mr. Ubbelohde, if you'll raise
24 your right hand, before you're seated, Ms. Wright
25 will swear you in.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 PETER UBBELOHDE,
2 after having been first duly sworn under oath,
3 was questioned, and testified as follows:

4 THE CLERK: Thank you. Please be seated.

5 THE COURT: Mr. Ubbelohde, Mr. Mysliwiec.

6 DIRECT EXAMINATION

7 BY MR. MYSLIWIEC:

8 Q. Special Agent Ubbelohde, we're going to --
9 it is after 5:00 p.m., so we're going to narrow it
10 down. Can you confirm that you're an FBI special
11 agent?

12 A. I can.

13 Q. And are you, in fact, the case agent on
14 this investigation?

15 A. I am.

16 Q. And does that mean that you managed the
17 investigation and that you participate in other
18 officers doing their bits and pieces?

19 A. Yes, it does.

20 Q. Through being a case agent, did you come to
21 obtain a phone from Mr. Nissen?

22 A. Yes, I did.

23 Q. And did he agree with you that it is his
24 phone that you obtained from him?

25 A. I don't know that he direct -- New Mexico

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

*Blacks
how
Defendant
about
F.B.I*

1 State Police had his phone and some personal
2 briefcase items when they detained him. They gave it
3 to me. I believe he confirmed the bag was his, and I
4 want to say the phone was inside the bag.

5 Q. Okay. Without any further details on all
6 that, it's your belief that I'm holding in my hand
7 Mr. Nissen's phone that I got out of a bag that's in
8 evidence as Government's Exhibit 8?

9 A. Yes.

10 MR. MYSLIWIEC: And may I approach, Your
11 Honor?

12 THE COURT: You may.

13 BY MR. MYSLIWIEC:

14 Q. I'm going to hand you Government's Exhibit
15 8. Do you see a number on there, even though it's
16 very faint and small, called an IEMI number?

17 A. IMEI?

18 Q. Yes.

19 A. Yes.

20 Q. And I know this is also very small, but can
21 you see whether -- I'll let Alex do that part. Can
22 you see whether the number on the back of the
23 physical phone you're holding right now -- let's go
24 to the subscriber page -- matches the corresponding
25 number on the subscriber page from T-Mobile, the one

1 ending in 12?

2 A. Yes, they match.

3 Q. And you were here when the T-Mobile
4 representative said the number on the call record is
5 the same except the last digit is replaced with a
6 zero?

7 A. I was.

8 Q. Oh, and then when we go to the call record,
9 do you see in the top few phone calls some city
10 names, in the third column from the right?

11 A. Yes, I do.

12 Q. **First tower city.** Just because the jury is
13 from all over, can you confirm that Edgewood is
14 further east than **Tijeras**?

15 A. I can.

16 Q. And that **Tijeras** is further east than
17 **Bernalillo east**?

18 A. **Yes.**

19 Q. And that Bernalillo east is further east
20 than Albuquerque?

21 A. It is.

22 Q. So in this sequence of phone calls, does
23 this record represent a person who is traveling west
24 making these phone calls?

25 A. That would be the assumption based on the

*why
doesn't
this go
east
to
phone
TX?*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 different towers.

2 Q. Don't assume, but based on what you know
3 about the geography of New Mexico and based on what
4 you know on the timing listed on these phone calls
5 and the city, is each phone call successively west of
6 the phone call before, until we get to Albuquerque?

7 A. Yes.

8 MR. MYSLIWIEC: I'll pass the witness, Your
9 Honor.

10 THE COURT: All right. Thank you,
11 Mr. Mysliwicz.

12 Mr. Gleria, any cross-examination of
13 Mr. Ubbelohde?

14 MR. GLERIA: No, Your Honor.

15 THE COURT: All right, Mr. Ubbelohde, you
16 may step down.

17 MR. MYSLIWIEC: And I'll retrieve Exhibit 8
18 from him.

19 THE COURT: Thank you for your testimony.

20 MR. MYSLIWIEC: Your Honor, for evidence, I
21 just want to make sure that Exhibit 6, a dictionary
22 definition, and Exhibit 7, some printed-out song
23 lyrics, are in evidence, I think without objection.

24 THE COURT: That's true. Correct, Mr.
25 Gleria? Those are in.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 MR. GLERIA: Yes, Your Honor.

2 THE COURT: Those are in evidence.

3 MR. MYSLIWIEC: That's what we have, Your
4 Honor. The Government rests.

5 THE COURT: So the Government rests.

6 Why don't we stop for the evening, and
7 we'll come back tomorrow.

8 Let me talk to the attorneys real quickly
9 here, and then I'll let everybody go.

10 While they're coming up, I'm going to
11 remind you of a few things that are especially
12 important, because we are taking our first break for
13 the evening here.

14 Until the trial is completed, you're not to
15 discuss the case with anyone, whether it's members of
16 your family, people involved in the trial, or anyone
17 else, and that includes your fellow jurors. So if
18 you go home and you've become good friends, don't get
19 on the internet and talk to each other about this
20 case. Just go home and relax tonight. If anyone
21 approaches you and tries to discuss the trial with
22 you, please let me know about it immediately.

23 Also, you must not read or listen to any
24 news records of the trial. Again, don't get on the
25 internet and do any research for purposes of this

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 case. And finally, remember you must not talk about
2 anything with any person who is involved in the
3 trial, even if it doesn't have anything to do with
4 the trial.

5 If you need to speak with me, simply give a
6 note to one of the court security officers,
7 Ms. Bevel, Ms. Wright.

8 I'll try not to repeat these every time we
9 take a break, but we are moving along pretty quickly
10 so I probably will, as we go to different stages,
11 keep reminding you of these, so we bring this case in
12 for a good landing.

13 Let me speak to the attorneys just a moment
14 here to try to decide on scheduling in the morning.

15 (The following proceedings were held at the
16 bench.)

17 THE COURT: Do y'all need to do anything
18 before you put on your case, or will you rest before
19 the jury?

20 MR. GLERIA: No.

21 THE COURT: All right. So are these jury
22 instructions in good enough shape? I added an
23 interstate commerce instruction. We didn't have one
24 in there, and the advisory notes to 875 suggested we
25 use one, so I used the one there. Also, there is

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 that instruction about not considering anybody else
2 might be guilty of a crime. I just don't think those
3 paragraphs are very appropriate, so I pulled them
4 out. If somebody thinks -- I'm afraid if I give it,
5 it might cause them to wonder.

6 MR. GLERIA: I agree.

7 MR. MYSLIWIEC: That's usually -- it's an
8 unusual fact pattern to be clean of one defendant.

9 MR. MYSLIWIEC: One thing I'd like to do,
10 whenever the Court thinks is the best time, but
11 outside the presence of the jury, is if we could
12 inquire of Mr. Gleria on the record in a way that Mr.
13 Nissen can hear to confirm that they've consulted and
14 it's his choice not to testify, even though he has an
15 absolute right if he wants to. I don't want him to
16 be unfairly saying that "My lawyer wouldn't let me."
17 I want to protect the record.

18 THE COURT: We'll do that maybe first thing
19 in the morning.

20 MR. GLERIA: Thank you.

21 THE COURT: Should I just have them all
22 back here at 8:30, and we'll try to get started at
23 8:30, or build in 15 minutes?

24 MR. MYSLIWIEC: I have one thing to bring
25 up, so maybe 8:45 or 9:00. I will absolutely be here

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 at 8:30.

2 THE COURT: What do you think? 8:45 or
3 9:00? I don't mind bringing them back at 8:45. And
4 that way --

5 MR. MYSLIWIEC: Sure.

6 THE COURT: -- if they have to wait, I'll
7 tell them they have to wait.

8 MR. MYSLIWIEC: My thing is not long. I
9 have one thing to bring up.

10 MR. GLERIA: Is there something else?

11 THE COURT: I'll give you a set of jury
12 instructions. Take them home and if you see
13 anything, shoot me an email. Tell me if you have any
14 objections or thoughts or suggestions or anything.
15 But if you'll wait a minute here, we'll try to give
16 you a set before you leave.

17 MR. MYSLIWIEC: Yes, sir.

18 THE COURT: All right. Let me talk to them
19 and get them out of here then.

20 (The following proceedings were held in
21 open court.)

22 THE COURT: I'm going to let you go. And
23 normally I'd bring you back about 8:30, but I think
24 I'm going to have about 15 minutes of work. So if
25 you will be in the jury room at 8:45, that will give

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 me about 15 minutes to work with the lawyers and the
2 parties. And that way, you won't just be waiting.
3 There is a possibility you may have to wait a little
4 bit, but I'm estimating that I need about 15 minutes
5 with them in the morning. So if you'd be in the jury
6 room about 8:45, ready to go. Ms. Wright and
7 Ms. Bevel will have some goodies in there for you, so
8 it won't be wasted time if you come a little early.
9 But try to be there about 8:45, and I'll try to have
10 my work done and ready for you at that time.

11 Thank you for your hard work. Be safe on
12 your travels. It's been cloudy back over there.
13 It's windy. But I guess we've got our afternoon
14 monsoons.

15 All right. Y'all have a good afternoon.
16 Thank you for your hard work.

17 (The jury left the courtroom.)

18 THE COURT: All right. Anything we need to
19 discuss before we take our break? Anything else I
20 can do for you?

21 MR. GLERIA: Yes, Your Honor.

22 THE COURT: Yeah.

23 MR. GLERIA: I would like to leave most of
24 my stuff.

25 THE COURT: You can leave it here.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 MR. GLERIA: I'll wait for the jury
2 instructions.

3 THE COURT: Everybody is gone. Court
4 security is ready to go home. We're done.

5 MR. MYSLIWIEC: One thing I'll ask, Your
6 Honor, is if the defense wants to do their Rule 29
7 motion tomorrow morning. It's pretty late today.

8 THE COURT: Yes, we'll do it tomorrow, if
9 you want to. If you don't have a motion, we'll take
10 up whatever else. Anything else, Mr. Mysliwicz?

11 MR. MYSLIWIEC: No, sir. Thank you.

12 THE COURT: Anything else, Mr. Gleria?

13 MR. GLERIA: No, Your Honor.

14 THE COURT: All right. Y'all have a good
15 evening. I appreciate your hard work. Would y'all
16 just wait to pick up these copies? We'll hand them
17 to you, so you can take them home with you.

18 Mr. Gleria, would you wait, so we can give
19 you a copy of the jury instructions?

20 MR. GLERIA: I'm waiting.

21 (The Court stood in recess.)
22
23
24
25

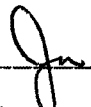
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages constitute
8 a true transcript of proceedings had before the said
9 Court, held in the District of New Mexico, in the
10 matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 19th day of November, 2019.

13
14 
15 Jennifer Bean, FAPR, RMR-RDR-CCR, CRR
16 Certified Realtime Reporter
17 United States Court Reporter
18 NM Certified Court Reporter #94
19 333 Lomas, Northwest
20 Albuquerque, New Mexico 87102
21 Phone: (505) 348-2283
22 Fax: (505) 843-9492
23 License expires: 12/31/19
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW MEXICO
3 UNITED STATES OF AMERICA,
4 Plaintiff,
5 vs. NO: 1:19-CR-00077-JB
6 MICHAEL NISSEN,
7 Defendant.

8
9 DAY 2

10 Transcript of Trial Proceedings before The
11 Honorable James O. Browning, United States District
12 Judge, Albuquerque, Bernalillo County, New Mexico,
13 commencing on August 7, 2019.

14 For the Plaintiff: Mr. Paul Mysliwicz
15 Mr. Alexander Uballez

16 For the Defendant: Mr. Kenneth Gleria
17 Mr. Jake Mkhitarian

18
19
20
21 Jennifer Bean, FAPR, RDR, CRR, RMR, CCR
22 Certified Realtime Reporter
23 United States Court Reporter
24 NM CCR #94
25 333 Lomas, Northwest
Albuquerque, New Mexico 87102

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 THE COURT: All right. Good morning,
2 everyone. I appreciate everybody making themselves
3 available to me this morning. Does Mr. Nissen have
4 anything he needs to raise before we bring the jury
5 in?

6 MR. MKHITARIAN: No, Your Honor. His
7 family brought him a different shirt today, didn't
8 want him sitting in black today. I would just ask
9 that he be allowed to change into that shirt.

10 THE COURT: All right. So when the jury
11 comes in, Mr. Nissen will rest?

12 MR. GLERIA: Yes, Your Honor.

13 MR. MKHITARIAN: Yes, Your Honor.

14 THE COURT: All right. Well, let's talk
15 about jury instructions. What -- does anybody have
16 any? The ones that were passed out to you should
17 have had a different cover sheet. It should have
18 said "Court's second proposed jury instructions."
19 Are there any changes to them?

20 MR. GLERIA: We have the Court's first.

21 THE COURT: It says first, but it's
22 actually the second. It just didn't have the right
23 cover sheet on it. So the ones that you got last
24 night, they say first, but it should say second,
25 because, remember, you got one in the morning.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 MR. GLERIA: On the internet?

2 THE COURT: Well, we handed it to you when
3 you came in in the morning yesterday, so that was the
4 first set. And then we revised it. Remember, we
5 talked about taking out the expert?

6 MR. GLERIA: Yes, Your Honor.

7 THE COURT: So we made changes throughout
8 the day. So at the end of the day, this is what I
9 handed out. So it says Court's first, but it
10 actually reflects that we took out some paragraphs
11 of, don't consider the guilt of other people, things
12 like that. We changed "police." We made changes
13 throughout the day, so this was the one that was
14 resolved. It will be clear on the CM/ECF. But the
15 one you got -- do you have any changes,
16 Mr. Mysliwicz?

17 MR. MYSLIWIEC: No, everything we had has
18 already been incorporated. Thank you.

19 THE COURT: How about you, Mr. Gleria? Do
20 you have any changes? Mr. Mkhitarian, do you have
21 any changes to the set that was handed out last
22 night?

23 MR. MKHITARIAN: No, Your Honor.

24 THE COURT: All right. So other than the
25 cover sheet, that will be the jury instructions I

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 give. Does anybody need to make any -- besides
2 suggestions, comments, criticism, anybody need to
3 make any objections for the record?

4 MR. MYSLIWIEC: I don't know if I have
5 objections, but the two things I wanted -- three
6 things I wanted to talk about. One was if the
7 defense wanted to make a Rule 29 motion, I figure
8 before the jury gets lined up, this may be the best
9 time to do that, so the jury doesn't have to wait on
10 us doing that at the bench in some less ideal way.

11 The next thing is, I would like for the
12 Court to inquire on the record of counsel about
13 Mr. Nissen's knowing and voluntary decision not to
14 testify.

15 THE COURT: All right.

16 MR. MYSLIWIEC: Then the third thing is,
17 whenever the Court wants to hear about it, I'd like
18 to preview some concerns that I have based on lines
19 of questioning that the defense has pursued during
20 the presentation of evidence yesterday that I hope
21 won't mature into illegal arguments contrary to the
22 judge's instruction to be made during closing
23 argument.

24 THE COURT: All right. Well, anything you
25 want to do on a Rule 29, or do you want to go

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 straight to the colloquy with Mr. Nissen?

2 MR. MKHITARIAN: I agree with the United
3 States. I think since we haven't officially
4 rested -- well, we haven't rested yet.

5 MR. GLERIA: They haven't rested.

6 THE COURT: They did rest yesterday.

7 MR. GLERIA: Okay.

8 MR. MKHITARIAN: So I agree with Paul. I
9 do believe that hashing out Mr. Nissen's right to
10 testify would probably be appropriate first, and then
11 the defense would rest and then --

12 MR. GLERIA: No, we need to do the Rule 29.

13 MR. MKHITARIAN: Then the Rule 29. Or the
14 Rule 29 first, then Mr. Nissen's colloquy with regard
15 to his right to testify, and then we would rest.

16 THE COURT: If you're going to make a Rule
17 29, why don't you proceed to do it?

18 MR. MKHITARIAN: Thank you, Your Honor.
19 With regard to the previous motions that were filed,
20 specifically the First Amendment motion, Your Honor,
21 I do believe there has been testimony by the officers
22 that they were trained on this type of political
23 speech, that they knew about it, that they agreed
24 that Mr. Nissen was making political arguments with
25 regard to their jurisdiction over him. And with

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 respect to that, Your Honor, with them recognizing
2 that it is an actual, legitimate political stance
3 that they commonly deal with, and Mr. Nissen calling
4 to complain, citing various laws, his First
5 Amendment, Second Amendment, Fourth Amendment rights
6 that were violated, him exaggerating and ranting
7 about the consequences regarding future violations,
8 you know, threats made in regard to future
9 violations, Your Honor, not unlike threats that are
10 made every day: If you trespass on my property,
11 you'll be shot. If you break into my house, you
12 know, I will kill you. Things like these, threats
13 like these, Your Honor, are made every day and are
14 protected by free speech.

15 The fact that he didn't call with regard to
16 make a threat only, the fact that he was making
17 political statements, was trying to educate them and
18 exercising his right to educate them with regard to
19 what he believes their duties were, Your Honor, I
20 think at a bare minimum would allow for an acquittal
21 of Count 1 with regard to the conditional threat to
22 pigs, Your Honor. No specific person was mentioned.
23 It was conditioned on future rights being violated,
24 and I would argue that my previous motion entered in
25 the Court's records that we have referred to decide

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

True
Threat
Defendant

of
written
statutory
law

1 today should at least dismiss Count 1, that being for
2 the reason of being a political argument, not
3 serious, conditioned on future actions, and clearly
4 exaggerated. So I would renew that motion for at
5 least Count 1, Your Honor.

6 THE COURT: All right. Thank you,
7 Mr. Mkhitarian.

8 Mr. Mysliwiec, do you have a response to
9 the Rule 29 motion?

10 MR. MYSLIWIEC: We do, Your Honor. And
11 I'll try to make it brief, because I know the Court
12 has been paying close attention to the evidence and
13 knows the law very well.

14 The first element, knowingly transmitted a
15 communication containing a threat to injure the
16 person of another. Mr. Nissen dialed the phone.
17 That's an intentional act. We have the phone records
18 in that show all the calls to New Mexico State Police
19 were outgoing calls from Mr. Nissen's phone. We have
20 the evidence that that was indeed Mr. Nissen's phone,
21 that it was his phone number, that the unique factory
22 identifier for the phone showed that it was his. So
23 knowingly transmitted communication. The jury can
24 reasonably find that and indeed should.

25 Containing a threat to injure the person of

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 another. "I'm going to put a bullet in that fucking
2 pig's head. I'm going to pull out my revolver and
3 put that motherfucker drop dead, and I'm going to
4 shoot you in the fucking face," are all true threats.
5 We know they're true threats because we look at the
6 Court's instruction for what a true threat is. It's
7 a serious statement expressing intent to instill fear
8 which, under the circumstances, would cause
9 apprehension in a reasonable person as distinguished
10 from mere political argument, idle talk,
11 exaggeration, or something said in a joking manner.
12 There is nothing joking or idle about the threats by
13 an armed man to shoot people in the face or put
14 bullets in their head. He may or may not
15 subjectively have intended to do those things, but on
16 their face, they're a true threat that goes to the
17 jury.

18 Second element. Mr. Nissen transmitted the
19 communication with the intent to make a threat or
20 with knowledge that the communication will be viewed
21 as a threat. In reverse order, knowledge means
22 something done voluntarily and intentionally, not by
23 accident or mistake. This is not a miscommunication
24 case. This is not a case like Elonis where someone
25 posted song lyrics that a recipient took in a

1 threatening manner but may or may not have been
2 intended that way. These statements were conveyed
3 directly, and Mr. Nissen conveyed them knowing that
4 any reasonable person who heard them would take them
5 as a threat.

6 Additionally, he subjectively intended them
7 as a threat. When you look at the evidence in this
8 case, Mr. Nissen was upset that he had been
9 traffic-stopped. He was upset that he had been
10 written a citation. He was upset that he had a court
11 date as a result of having been written a citation.
12 And so the only motive that makes sense for him to
13 have made these threats is in response to that police
14 action, and in an attempt to avoid the legal
15 consequences that he thought he shouldn't be subject
16 to, because he believes State Police don't have any
17 right to write him tickets or haul him into court.
18 He was very upset, you heard, on the recorded call
19 with Juan Cordova, Exhibit 4, that he had a court
20 date, and he was very upset that he felt that he
21 would have to go to court and prove his innocence,
22 when he didn't think the guy had the right to draft
23 him a ticket in the first place. So that goes to the
24 jury, as well.

25 Third, that a communication was transmitted

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 in interstate commerce. We have the testimony of
2 Kenneth Lecesne from T-Mobile matching up the phone
3 to the phone numbers, to the phone call log, to show
4 that each of the calls in question -- the second call
5 to Victoria Gurule on November 24 and the call to
6 Barbara Beuzekom that later got transferred to Juan
7 Cordova on November 26 of 2018 -- both went through
8 switch Tango Tango Tango Alpha Sierra 005, which is
9 in Plano, Texas. You have Kenneth LeCesne's
10 testimony that the calls could not have been
11 completed or transmitted without the switch, and
12 therefore, that each of those calls went from New
13 Mexico to the switch in Plano, Texas, back to New
14 Mexico to be received by Victoria on November 2 and
15 Barbara on November 26. And that's enough to go to
16 the jury on the third element for each of the two
17 counts.

18 So I don't want to take up the Court's
19 time. The Court is going to hear a longer version of
20 all this in closing arguments, too. But subject to
21 the Court's questions, that's why I think the
22 defendant's Rule 29 motion must fail as to each of
23 the two counts.

24 THE COURT: All right. Thank you,
25 Mr. Mysliwicz.

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Mr. Mkhitarian, do you have anything
2 further on the Rule 29?

3 MR. MKHITARIAN: No, Your Honor, nothing
4 outside of the motion that's already been filed.

5 THE COURT: Well, I will try to give you
6 orders, opinions on those two motions. We left them
7 for this moment in this trial. I don't know this
8 area of the law extremely well, but I think the
9 pattern instructions reflect what the Tenth Circuit
10 has done in this area, that the jury gets to decide
11 whether the talk, the speech, was political argument
12 or it was something else. And that's the way we have
13 the jury instructions written, and I think they
14 reflect the Tenth Circuit law on this.

15 I think if the evidence were all one way in
16 this case, that it was all political argument, that I
17 could grant a directed verdict. But I think the
18 evidence taken in the light most favorable to the
19 United States, which is what I have to do at the Rule
20 29 stage, there is evidence that some of it was not
21 political speech and that it was more than political
22 speech, but it was -- there is evidence that it was a
23 threat, and that he believed it to be a threat, and
24 that the officers took it as a threat.

25 So I think there is evidence that the jury

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 could conclude beyond a reasonable doubt that
2 Mr. Nissen is guilty of the crimes charged. So I'm
3 not going to take it away from the jury. I'm going
4 to submit it to the jury. I'm going to take, in a
5 calmer moment, when we're not in the middle of a
6 trial and look a little bit at the law so I
7 understand this area a little better. But I think
8 the Tenth Circuit pattern instructions that we're
9 submitting do reflect accurately the law as I
10 understand it, and that I should not take this away
11 from the jury.

12 So I'll not grant the Rule 29 motions and
13 at a little bit calmer time, I'll try to issue
14 opinions and orders that reflect more fully what I
15 think the law is on this issue.

16 All right. Mr. Nissen, I think this is the
17 colloquy that all the lawyers need me to have with
18 you. You understand that in the United States, you
19 have a right to take the stand and testify in your
20 own defense. You understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. And that's a
23 decision you make. It's not a decision Mr. Gleria
24 makes. It's not a decision Mr. Mkhitarian makes.
25 It's certainly not a decision the Government makes,

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 and it's not a decision I make. It's a very personal
2 decision that you make, and you have. And do you
3 understand that you and you alone are the one?
4 Everybody can advise you. There is nothing wrong
5 with advice from counsel. But you understand this is
6 a decision you make, and it's one that you make
7 alone.

8 THE DEFENDANT: I do understand.

9 THE COURT: And have you had a chance to
10 discuss with Mr. Mkhitarian, Mr. Gleria --

11 THE DEFENDANT: No, I haven't.

12 THE COURT: Okay. Do you want to take a
13 moment to talk to them?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. And if you decide
16 to take the stand, then I think everybody is in
17 agreement you have the right to do it. And if you
18 decide that you don't want to take the stand, you're
19 the only one that can make that decision, too.

20 So why don't y'all take a moment and maybe
21 we can deal with this shirt issue, too, and then
22 we'll hear from Mr. Mysliwiec about it.

23 (The Court stood in recess.)

24 THE COURT: All right. We'll go back on
25 the record. Mr. Nissen, have you had an opportunity

1 to talk to Mr. Mkhitarian and Mr. Gleria about
2 testifying today?

3 THE DEFENDANT: Yes, I have.

4 THE COURT: What's your decision,
5 Mr. Nissen?

6 THE DEFENDANT: I don't think I want to
7 testify.

8 THE COURT: All right. Okay. And
9 Mr. Mysliwicz, is there any further colloquy that you
10 want me to have from the Government's standpoint with
11 Mr. Nissen?

12 MR. MYSLIWICZ: No, sir. If the Court is
13 satisfied, I think that's all we need.

14 THE COURT: How about you, Mr. Gleria,
15 Mr. Mkhitarian? Is there anything further you'd like
16 for me to ask Mr. Nissen?

17 MR. GLERIA: No, Your Honor.

18 THE COURT: All right. Thank you,
19 Mr. Gleria.

20 Mr. Mysliwicz, you had some issues you
21 wanted to raise about the closing arguments?

22 MR. MYSLIWICZ: Yes. There are two lines
23 of questioning that the defense pursued yesterday,
24 one of which I definitely timely objected to, but the
25 witness was able to answer the question upon the

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN

PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 overruling of my objection. And the other one I
2 think I objected to, but I'm not sure.

3 The first is: We know that the law does
4 not require that anybody know or expect that their
5 communication crossed state lines. That is simply
6 not the law in this Circuit. We have to prove that
7 the communication did cross state lines, and we did.
8 And if the Court looks at instruction 9, the
9 knowingly mens rea is not applied to the interstate
10 commerce element. And so I don't want to hear during
11 closing argument any illegal statement that defendant
12 should be found not guilty because he didn't know
13 that the communication crossed state lines or that he
14 didn't intend for the communication to cross state
15 lines or that he didn't expect the communication to
16 cross state lines.

17 The defense has a lot of leeway in arguing
18 what elements were proven by the facts that were
19 presented and the evidence that was adduced at the
20 case. But what the law requires is not a
21 he-said-she-said element subject to argument, and the
22 Court's instructions on what the Constitution demands
23 and what the law prohibits and what the law allows is
24 not subject to argument of the parties. It is the
25 truth. It is the exclusive province of the judiciary

*Declaration
is submitted
to Desmi
WTF?*

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN & ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 to determine what the law is.

2 So that's one illegal form of argument I
3 would prefer not to hear, and I'd like the Court to
4 ask that it not happen.

5 THE COURT: Well, let's hear anybody -- are
6 you doing closing, Mr. Mkhitarian?

7 MR. MKHITARIAN: Yes, Your Honor.

8 THE COURT: Do you intend to make any
9 argument along the lines Mr. Mysliwiec is concerned
10 about?

11 MR. MKHITARIAN: I was going to mention it
12 briefly. It wasn't going to be the focus of my
13 closing, and I guess my response to that would be
14 that, Your Honor, I think that the instructions are
15 clear. I agree with the United States that it
16 doesn't require an intent element. I don't think it
17 prohibits me from arguing that Mr. Nissen had no idea
18 that it was going to cross interstate lines. If they
19 follow the instruction and they convict him based off
20 of the instructions, and I'm sure Mr. Mysliwiec will
21 tell them Mr. Nissen doesn't have to know it goes
22 across state lines, but I don't necessarily think it
23 prohibits me from arguing that there is no way he
24 could have known that it was going to do that.

25 The T-Mobile expert stated that the only

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 way you could find out that it even does is when a
2 subpoena is filed and you get the actual switch
3 information back. So I think it's clear that -- I
4 mean, I, for one, didn't know that it does that, and
5 it's probably safe to say that Mr. Nissen didn't know
6 that. It's a statement of fact. So whether or not
7 that's an element in the case -- I mean, there's tons
8 of things that are not elements in the case that
9 we're going to argue: Whether it's political speech,
10 whether -- political speech is not defined. You
11 know, rants, exaggerations are not defined. But I
12 don't think it prohibits Mr. Nissen from touching on
13 them and moving on. I would keep it as a factual
14 assertion that -- based on what the T-Mobile person
15 already testified to, and then I'm going to move on.
16 I'm not going to make it the focus of my closing
17 argument, Your Honor.

18 THE COURT: Would you agree that you should
19 not say that the jury should not find him -- should
20 find him not guilty because he did not know that it
21 would cross interstate lines?

22 MR. MKHITARIAN: I will not make that
23 statement. I will say that Mr. Nissen did not even
24 know it was going across state lines.

25 THE COURT: I think that's where I'd draw

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN

A
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 the line.

2 MR. MKHITARIAN: Yes, Your Honor.

3 THE COURT: Don't put me in a situation.
4 Just be careful about me. Don't put me in a
5 situation where I have to correct what you argue. I
6 don't want to do that. You don't want me to do that.

7 MR. MKHITARIAN: Yes, Your Honor.

8 THE COURT: So if you cross the line and
9 say, "Find him not guilty," or, "He's not guilty of
10 the crime because he didn't know that element," then
11 I might have to correct the record.

12 MR. MKHITARIAN: I will not instruct them
13 to find him not guilty.

14 THE COURT: Can you live with that line,
15 Mr. Mysliwicz? And then that gives you full rein to
16 show them the jury instructions and emphasize that he
17 doesn't have to know that.

18 MR. MYSLIWICZ: So it's the position of the
19 United States that there is no proper purpose for
20 which the defense would mention at all that the
21 defendant didn't know that the phone call crossed
22 state lines, leaving only improper purposes for him
23 to mention it. But if the Court's question is, can I
24 live with it, yes, sir, I can.

25 THE COURT: All right. Let's draw the line

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN

PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 there. Just be careful. Don't get me in a situation
2 where I have to correct something you say.

3 MR. MKHITARIAN: Yes, Your Honor.

4 THE COURT: Keep it factual. What's the
5 next, Mr. Mysliwicz?

6 MR. MYSLIWIEC: The second thing is, mostly
7 Mr. Gleria pursued lines of questioning related to
8 whether acts were taken to carry out the threat. He
9 asked a lot of witnesses yesterday, "He wasn't even
10 there in the room with you, it was a phone call."

11 As the Court can see in the Court's
12 instruction 9, the threat is the crime. There is a
13 specific line at the end of the true threat
14 definition that informs us correctly that it is not
15 required that he intend to carry out the threat or
16 act to carry out the threat. And so it's the
17 position of the United States that there is no proper
18 purpose for mentioning the arguably true fact that
19 the defendant did not commit attempted murder by
20 acting to carry out these murder threats. It is
21 not -- there is no proper purpose in this threat
22 trial for which the jury is instructed only to
23 consider the charges before them to point out that
24 the defendant did not, in fact, murder anyone,
25 because it was the threat to murder that is the crime

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 in and of itself.

2 And so despite the questions being allowed
3 yesterday about all the different ways and at all the
4 different times the defendant did not murder anyone
5 or did not take actions that we can prove towards
6 murdering anyone, I don't think it would be proper to
7 argue on defendant's behalf that he should be found
8 not guilty because he did not actually murder or
9 attempt to murder anyone, or even really to talk
10 about the lack of acts that the jury instruction
11 makes clear is legally irrelevant.

12 THE COURT: Your thoughts, Mr. Mkhitarian?

13 MR. MKHITARIAN: Your Honor, once again,
14 Mr. Nissen's acts or lack of acts go directly to the
15 seriousness of --

16 THE COURT: Hold on just a second.

17 (A discussion was held off the record.)

18 THE COURT: Go ahead, Mr. Mkhitarian.

19 MR. MKHITARIAN: Your Honor, Mr. Nissen has
20 a right to present a case to show what the evidence
21 does not show; and what goes directly to the
22 seriousness of a threat, as we talked about in voir
23 dire or anything else, is what acts someone might
24 take, and jurors agreed that, you know, a water
25 balloon versus a gun in someone's hand when a threat

1 was made is a very loose example, but the act of
2 having the water balloon versus a gun changes the
3 serious nature of the threat.

4 So what Mr. Nissen did or did not do goes
5 directly to the seriousness of or, you know, what the
6 threat actually is. His acts of not being aggressive
7 during a traffic stop, his acts of not pulling out a
8 gun, his acts of being compliant, things of those
9 nature, go directly to how seriously the threat
10 should be taken. So I don't agree that his abilities
11 to carry out the threat -- while in the jury
12 instructions, I agree, it is the jury instruction,
13 and the United States is right that to find him
14 guilty, his ability to carry it out is not relevant,
15 but it is relevant to the seriousness of the threat,
16 and we should be allowed to argue that where
17 Mr. Nissen was, what he did or did not do, is
18 relevant to whether or not the threat should have
19 been taken seriously at all.

20 THE COURT: All right. Anything further on
21 that, Mr. Mysliwicz?

22 MR. MYSLIWIEC: To say that the threat is
23 not serious because it was not accompanied by acts is
24 directly contrary to the Court's instruction, and
25 counsel is not at liberty to quibble at this stage

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 about what the law is. That is the exclusive
2 province of the judiciary. The Court's instructions
3 are clear. The defendant has not lodged objections
4 to instruction 9. And to argue contrary to it, to
5 say that one of the elements is not met because acts
6 that are explicitly not required are not present,
7 would be an improper argument meant to confuse the
8 jury and to request that they make a determination in
9 the defendant's favor that is contrary to the clear
10 law.

11 THE COURT: Well, I think I have given both
12 sides a fair amount of leeway in this case to try to
13 put in context the statements so that the jury can
14 have a good sense of the context in which Mr. Nissen
15 made his statements. We've had a robust discussion
16 of the traffic stop. Nothing really was kept out
17 about the traffic stop. So I think we've set the
18 context.

19 I'm not inclined to clip your wings,
20 Mr. Mkhitarian, about what didn't occur, because I
21 think some things that didn't occur can go to
22 context. But again, just be careful in your argument
23 not to make a statement about the law that I would
24 have to correct. The fact you're pointing out things
25 that didn't occur I think might go to his -- you

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

*I stated
all this
in a
motion
of the
court.*

*The
first one
I wrote*

1 know, the intent element in the second element. So I
2 do think that some leeway -- these are closing
3 arguments, after all, and I think to give you an
4 opportunity to tell the jury, in that second element,
5 Mr. Nissen transmitted the communication with the
6 intent to make a threat, I think I need to give you
7 some leeway, but just don't get me in a position
8 where I have to correct any legal statement you make.
9 So don't tell the jury that because he didn't commit
10 any violent acts or something like that, you've got
11 to find him not guilty, that that's not a threat.
12 Okay?

13 MR. MKHITARIAN: To be clear, Your Honor,
14 what I would be arguing would be that he intended to
15 state a political position; that he intended to
16 notify them of the consequences of violating his
17 rights. But I would never tell them that because he
18 didn't have a gun, they should find him not guilty.

19 THE COURT: Okay. Just help me out. I
20 don't want to correct your closing. I never like to
21 do that. And you don't want me to do it, either.
22 It's just not a good moment. So I'll give you a lot
23 of leeway to make your closing argument, because I do
24 think it's a contextual issue. But just be careful
25 with the law so that I don't have to be in a

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

**BEAN
& ASSOCIATES, Inc.**
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 situation of giving some supplemental instruction or
2 something like that.

3 Mr. Gleria?

4 MR. GLERIA: Judge, can I just run out and
5 use the restroom before the jury comes in?

6 THE COURT: Sure.

7 THE CLERK: We do have all the jurors here.

8 THE COURT: Let me just ask, before we take
9 a break, is there anything else we need to discuss on
10 jury instructions, closings, anything else? Because
11 what I intend to do is bring them in, the Government
12 has already rested. I'll ask Mr. Gleria,
13 Mr. Mkhitarian, does Mr. Nissen have any witnesses or
14 evidence he wishes to present? You can rest. And
15 then I intend to go right into the reading of the
16 instructions. I think if we go now, probably the
17 Government ought to be prepared, as soon as I
18 conclude, to go into its closing.

19 MR. MYSLIWIEC: Yes, sir.

20 THE COURT: Does that work for everybody?

21 MR. GLERIA: Yes, sir.

22 THE COURT: All right. It seemed like
23 there was one other thing I was going to mention, but
24 I can't think of what it is. So why don't we take a
25 break and we'll come back in. We do have all the

1 jurors, so they're ready to go. Let's be in recess
2 for a few minutes.

3 (The Court stood in recess.)

4 THE COURT: All right. We'll go back on
5 the record. Is the podium set up the way you want
6 it, Mr. Mysliwicz?

7 MR. MYSLIWICZ: Yes, thank you, Your Honor.

8 THE COURT: Anything we need to discuss?
9 Anything I can do for you before we bring in the
10 jury?

11 MR. MYSLIWICZ: No, sir. We're all sitting
12 down behind the table. I think we're ready.

13 THE COURT: How about you, Mr. Gleria,
14 Mr. Mkhitarian?

15 MR. MKHITARIAN: Yes, Your Honor. We're
16 ready.

17 THE COURT: I can see the top of their
18 heads. But rarely can they see in the courtroom.
19 But that juror -- we've got to make sure we have
20 Mr. Nissen in this room before we even get the jury
21 lined up, because that man is 6'6". Tall man. He
22 can see me and see in here. That other fellow was
23 tall, too. We've got two tall jurors.

24 All rise.

25 (The jury entered the courtroom.)

1 THE COURT: All right. Everyone be seated.
2 Well, I brought you back a little later
3 than I usually do, and I still made you wait. I hope
4 Ms. Bevel and Ms. Wright had some goodies for you.
5 It's been a good morning. It wasn't too much longer
6 of a wait, but we went ahead and took our break
7 before we brought you in. So maybe we can go a while
8 without us having to take a break, even though we've
9 been working this morning since 8:30 ourselves.

10 Thank you for being back, on time, and
11 ready to go. I appreciate the way y'all have
12 approached your task. You've been a great bunch to
13 work with. Ms. Bevel and Ms. Wright have told me
14 you're a good bunch, and I appreciate it very much.
15 I look forward to working with you today.

16 All right. Mr. Gleria, Mr. Mkhitarian,
17 does Mr. Nissen have any witnesses or evidence he
18 wishes to present? Mr. Gleria?

19 MR. GLERIA: No, Your Honor. The defense
20 rests.

21 THE COURT: All right.
22 (The jury was instructed.)

23 THE COURT: All right, Mr. Mysliwicz. Do
24 you have a closing argument on behalf of the
25 Government?

of course
I did
film
proof
Desiron

1 MR. MYSLIWIEC: I do, Your Honor.

2 THE COURT: Mr. Mysliwiec.

3 MR. MYSLIWIEC: Thank you.

4 Ladies and gentlemen, thank you very much
5 for paying close attention during voir dire, for
6 expounding honestly and openly, for paying attention
7 during the presentation of evidence yesterday, and
8 hopefully for paying attention. I'll try not to take
9 up too much of your time now in my closing argument.

10 This is my opportunity to go over the
11 evidence we heard and saw yesterday, compare it to
12 the Court's instruction that your oath requires you
13 to follow on what the law is, so that you can be
14 prepared to go back there and discuss for as long as
15 you need whether Michael Nissen is guilty or not
16 guilty as to each of Count 1 and Count 2.

17 Alex and I have tried to be precise in
18 presenting the evidence to you. We got it done in
19 one day. And now I think you're going to have
20 everything you need to determine that on November 2
21 Michael Nissen threatened to injure Jordan Burd in
22 interstate commerce, and then on November 26, also of
23 2018, that he threatened to injure Barbara Beuzekom
24 in interstate commerce.

25 The defense has done a good job of trying

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
A
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 to focus you on things that I don't need to prove to
2 you. Mr. Gleria and Mr. Mkhitarian have worked very
3 diligently to make sure that you know that the
4 defendant didn't actually murder Officer Burd or
5 Barbara Beuzekom. They have pointed out several
6 phone calls in which he didn't threaten to kill
7 anyone. They have pointed out parts of phone calls
8 in which he threatened to kill people that, in those
9 parts, he wasn't threatening anyone. They have done
10 their job well.

11 But what I want to take just a few moments
12 for is to go over what the United States does have to
13 prove for you. The defendant is charged with two
14 counts of the same offense, and the elements are the
15 same for each. On your screen you should see
16 instruction 9. There are three elements, and then
17 there is an explanatory paragraph about what a threat
18 means in the law as instructed by Judge Browning. I
19 hope it doesn't bother anyone, but I want to go
20 through these elements in reverse order.

21 Element 3 is that the communication was
22 transmitted in interstate commerce. Interstate
23 commerce is defined in the context of the law in
24 instruction 11. Instruction 11 tells us that
25 interstate commerce includes communication or travel

1 between one state and another. There can be no
2 reasonable doubt that that happened in each of the
3 two counts here. Exhibit 5, which you'll have to
4 review, is the phone records that show that the three
5 calls to Victoria Gurule on November 2, 2018, and the
6 phone call to Barbara Beuzekom on November 26, 2018,
7 all went through the T-Mobile system through switch
8 TTTAS 005. And those records, as well as the
9 testimony of Kenneth Lecesne yesterday, told you that
10 switch TTTAS 005 is in Plano, Texas. Kenneth
11 Lecesne, you recall, testified that the phone call
12 could not happen ~~without the switch~~, and that the
13 phone calls that he was asked about that match up the
14 three calls to Victoria Gurule and that match up to
15 the phone call to Barbara Beuzekom on November 26 all
16 went through that switch in Plano, Texas.

LIE →
17 You have Michael Nissen's phone, which is
18 Exhibit 8. And on that phone, it's faint, and so you
19 may want to rely on the jurors among you who have the
20 sharper eyesight, like Peter Ubbelohde. But they
21 will be able to point out to anyone who, like me, is
22 not great at reading small numbers, that on the
23 bottom right of the back of the case you have the
24 factory stamped number that matches the billing
25 record that you see in Exhibit 5 and that matches the

1 call log that you see in Exhibit 5, except that as
2 Kenneth Lecesne explained yesterday, the last digit
3 in the call log is always zero. So the last digit in
4 the subscriber record and on the physical phone is
5 going to end in 112, and on the call log it's going
6 to end in 110. That's just how T-Mobile prints their
7 call logs. Please don't be confused by that.

8 So we know that these phone calls could not
9 have happened but for the switch. We know the switch
10 is in Plano, Texas. We know these phone calls went
11 to Plano, Texas. And that's true even though the
12 defendant was in New Mexico and even though the
13 person receiving his calls was in New Mexico. That
14 satisfies the law. Count 3 is done, or element 3 is
15 done.

16 Element two is that the defendant
17 transmitted the communication with the intent to make
18 a threat or with knowledge that the communication
19 ~~would be viewed as a threat~~. The judge has defined
20 knowledge for you. It's instruction 10. Instruction
21 10 tells us that knowledge within the context of the
22 law in this case is something done voluntarily and
23 intentionally, not by mistake or accident. The
24 defendant telling Victoria Gurule that he would put a
25 bullet in Jordan Burd's head was not accident. That

1 was not mistake. When he said he would pull out his
2 revolver and drop Jordan Burd dead, that was not a
3 mistake. He said that on purpose. The defendant
4 telling Barbara Beuzekom that he would shoot her in
5 her face was not a mistake. It was not an accident.
6 This is not a case about misunderstood communications
7 or communications that could be reasonably taken
8 multiple ways. The defendant knew that those words
9 would be taken as threat.

10 And additionally, even though element 2
11 requires that you only find one or the other, you
12 also have all the information you need to know that
13 the defendant personally intended those words to be
14 taken as a threat. How do we know that? We know
15 that because Michael Nissen is a man who is desperate
16 to be taken seriously. He calls people up to lecture
17 them about his fantasy of what the Constitution
18 means. He instructs people that they need to go to
19 someone's Twitter account or to Google some topic to
20 realize that he is secretly a legal genius and their
21 entire profession is a lie and actually the New
22 Mexico State Police doesn't have the authority to
23 pull anyone over.

24 When he makes these threats, it is not
25 because he wants to be perceived as a joke. It is

1 because he wants to be taken seriously. He doesn't
2 want his car towed. He doesn't want to walk home,
3 and so he will sign Jordan Burd's citation, but then
4 he calls to complain about it three times within
5 about an hour to Victoria Gurule and then again on
6 November 26 to Barbara Beuzekom. And in those calls
7 there is no humor, there is no fun. There is only
8 blood lust. A joke is not going to get the police to
9 back off. A joke is not going to get him out of his
10 court date. He needs them to believe that if they
11 continue to interact with him, if they make him go to
12 court and prove his innocence, like he complained to
13 Juan Cordova, he may put a bullet in Jordan Burd or
14 another friend of theirs' head.

15 First things last, we get to element 1.
16 The defendant knowingly transmitted a communication
17 containing a threat to injure the person of another.
18 The defendant knew he dialed the New Mexico State
19 Police those multiple times that are shown in the
20 call log in Exhibit 5. There is no reason in the
21 evidence to believe that those were a misdial or that
22 it was in his pocket when he sat down and he called
23 dispatch by mistake. Those calls were made
24 intentionally. So the knowingly making the
25 communication is satisfied.

1 So the last remaining thing we have to talk
2 about is the second part of the first element,
3 containing a threat to injure the person of another.
4 A threat is defined within this instruction itself
5 within the meaning of the law and it says right there
6 in instruction 9, if you scroll down a bit, Alex, "A
7 threat is a serious statement expressing intent to
8 instill fear which, under the circumstances, would
9 cause apprehension in a reasonable person as
10 distinguished from mere political argument, idle
11 talk, exaggeration, or something said in a joking
12 manner."

13 It is not necessary that Mr. Nissen
14 intended to carry out the threat or had the ability
15 to carry out the threat, even though we know that he
16 was armed and he does possess that shotgun that's on
17 the table now.

18 If we bring up the transcript, that's 2-A,
19 this is not a case about profanity. This is not a
20 case about disliking police even to the point of
21 calling them pigs. This is not a case about
22 complaining about a false arrest on some petty proof
23 of insurance violation. This is a case about a man
24 who told a dispatcher that if any cop pulled him over
25 while driving, he would put a bullet in that cop's

1 head, that he would pull out a revolver and drop that
2 cop dead; who told a civilian administrative employee
3 who didn't do what he wanted fast enough that he
4 would therefore shoot her in her face.

5 There was some figurative language in the
6 phone call. We met Officer Burd. He's a human.
7 He's not a swine. So calling him a pig is not
8 literal. And I don't think anyone believes that
9 Officer Burd ever had sex with his own mother. Those
10 statements are not why we're here. This is not a
11 profanity case. This is not a case of disrespect of
12 cop. Nor is exaggerated language a proper way to
13 describe these threats.

14 One of the words we have to describe a very
15 exaggerated statement in the English language is
16 hyperbole. And hyperbole, like many words in the
17 English language, has definition. I took the liberty
18 of putting into evidence several different
19 definitions of hyperbole. That's Exhibit 6. A
20 figure of speech in which exaggeration is used for
21 emphasis or effect, as in, "I could sleep for a
22 year," or, "This book weighs a ton."

23 Another example of hyperbole comes from --
24 I don't know if any of you are familiar with Weird Al
25 Yankovic. He's a comedian. This is a song about how

1 he's not upset that he has broken up with his
2 ex-girlfriend, and in this song Weird Al Yankovic
3 says, "I would rather jump naked on a huge pile of
4 thumb tacks or stick my nostrils together with crazy
5 glue." He said, "I would rather dive into a swimming
6 pool filled with double-edged razor blades" than
7 spend one more minute with his ex-girlfriend.
8 Statements not intended to be taken seriously.
9 Statements intended as a joke. You can think Weird
10 Al's funny or not, but he's clearly trying to be
11 funny. "I'm going to put a bullet in that fucking
12 pig's head. I'm going to pull out my revolver and
13 put that motherfucker drop dead. I'm going to shoot
14 you in your fucking face," are not statements that
15 are intended be funny. They are intended to be taken
16 seriously. They are intended as threats.

17 Threats, true threats, are not protected by
18 the First Amendment. We all work hard here to guard
19 our constitutional rights, no one harder than Judge
20 Browning. And he has given you the instruction you
21 see in instruction 9 defining a true threat. The
22 things that are protected by the First Amendment are
23 therefore not a crime. Mere political talk, idle
24 talk, joking talk, talk not intended to be taken
25 seriously. Those things are protected even if

1 they're offensive, even if I like police officers but
2 you call them names, or vice versa. That is not what
3 this case is about. This case is about true threats
4 intended to be taken as threats.

5 Even if Mr. Nissen were correct that
6 Officer Burd violated his rights, even if Officer
7 Burd had arrested Mr. Nissen for failure to show
8 paper proof of insurance and only having proof of
9 updated insurance on his phone when the car was
10 insured, the answer still is not to threaten to put a
11 bullet in his head.

12 But Burd didn't violate his rights. You
13 heard from Officer Burd. He was questioned about
14 this. He testified he didn't tow the car, even
15 though his department said he had the authority to do
16 it because it wasn't registered, updated, and it
17 didn't have insurance; that he didn't arrest Nissen
18 even when the defendant refused originally to sign a
19 citation, and that he gave the shotgun back even
20 though he didn't feel safe to do so because he
21 thought he didn't have the right to take a man's
22 property if he wasn't going to arrest him, which he
23 explained he had already decided he wasn't going to
24 do even though he could have.

25 Officer Burd figuratively bent over

1 backwards to respect Mr. Nissen's rights and in
2 return, Mr. Nissen threatens to shoot him in the
3 head.

4 The State Police were reasonable to take
5 these threats seriously. They were reasonable to
6 email out bulletins warning patrol officers that this
7 armed man was on the road who had threatened Officer
8 Burd. They were reasonable to put up posters warning
9 anyone at the office about this fellow and his
10 threats and the fact that he was armed, and
11 Mr. Nissen wanted them to take him seriously. Their
12 reaction was not a mistake or accident. He knew that
13 they would take it seriously when he said the things
14 he said the way he said them.

15 And don't take my word for it. You are
16 going to be able to listen to these phone calls to
17 Victoria Gurule as many times as you need to to be
18 firmly convinced that the defendant, beyond any
19 reasonable doubt, made these threats in interstate
20 commerce, knowing they would be taken as threats
21 intending that they would be taken as threats. And
22 that's why you have all the evidence you need to find
23 beyond any reasonable doubt that on November 2, 2018,
24 Mr. Nissen, while he was in the district of New
25 Mexico, threatened to injure Jordan Burd in a way

1 that affected interstate commerce by going through
2 Plano, Texas; and that on November 26, he threatened
3 to kill Barbara Beuzekom while he was in New Mexico
4 in a way that affected interstate commerce by that
5 call being routed through Plano, Texas. That's all
6 you need to write guilty as to Count 1 and guilty as
7 to Count 2, and that's what I ask you to do. Thank
8 you.

9 THE COURT: Thank you, Mr. Mysliwicz.

10 Mr. Mkhitarian, do you have a closing
11 argument on behalf of Mr. Nissen?

12 MR. MKHITARIAN: I do, Your Honor.

13 THE COURT: Mr. Mkhitarian.

14 MR. MKHITARIAN: Thank you. Ladies and
15 gentlemen of the jury, Your Honor.

16 THE COURT: Mr. Mkhitarian.

17 MR. MKHITARIAN: Counsel. Thank you very
18 much for being here today. I'm sure when all of you
19 woke up and drove here for jury duty, none of you
20 thought that we'd be talking about First Amendment,
21 free speech, what we can and cannot talk about. And
22 it's probably a surprise to you that we're going to
23 be talking about that today.

24 So the essential thrust of what's going on
25 is, we're going to be deciding today what speech is

1 limited; when someone crosses a line; when someone's
2 speech is not protected by the First Amendment.
3 There is a reason why it's the First Amendment.
4 There is a reason why it was the first thing our
5 Founders thought they should write down and protect.
6 It's the right to speak, to speak freely. The right
7 to have opinions, to be angry; the right to talk
8 about whatever it is that you want and not be
9 punished by it. That's why they wrote it down first.

10 Our freedom of speech shall not be abridged
11 in any way. So we're here to decide whether or not
12 Mr. Nissen's political rant should be criminalized.
13 And make no mistake, it is political rant. The
14 officer recognized it's political rant. You do not
15 have to agree with Mr. Nissen's political beliefs.
16 You don't have to agree with how he expresses them,
17 but you do have to agree that he has a right to
18 express his political beliefs.

19 Now, Mr. Nissen -- he was upset. He was
20 upset about being pulled over. He gets pulled over,
21 and through the officer's own testimony, not for any
22 moving violations, not for speeding, not for failing
23 to maintain his lane, not for driving too slow or
24 failing to use his turn signals. Mr. Nissen was
25 driving completely normal, and he gets pulled over

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 because the officer is fishing for violations on the
2 road, looking for no insurance, looking for no
3 registration. So Mr. Nissen, being a law-abiding
4 citizen that he is, pulls over in a safe manner,
5 pulls over when the officer asks him to, complies
6 with the officer, does as the officer says, makes no
7 aggressive movements, expresses to him his belief
8 that the officer has no authority over him, tells the
9 officer that he had no reason for pulling him over,
10 because he was following all the laws; and the
11 officer himself states there was nothing threatening
12 made during the stop; that Mr. Nissen was completely
13 compliant with all of his demands, so much so that he
14 returns his gun to him and lets him drive off.

15 Now, Mr. Nissen, upset about this, upset
16 about being pulled over for not making any moving
17 violations, calls dispatch. He calls dispatch to
18 basically rant about his belief that his rights were
19 violated. He says -- he uses figurative language
20 basically conditioned on future conduct. "If the
21 police do this, I'm going to do this. If my rights
22 are violated, I'm going to do that."

23 The statement doesn't name a specific
24 person. It doesn't say, "I'm going to kill Officer
25 Burd." It doesn't say, "I'm going to hurt this

1 person specifically." There was no imminent danger
2 from the statements. They were separated by space
3 and time. Moreover, it was political. He talks
4 about his First Amendment, his Second Amendment, his
5 Fourth Amendment. Not random amendments. He's
6 saying, "My right to free speech was violated. My
7 right to carry a firearm, which was taken away from
8 me during the stop, was violated. My right to be
9 free from illegal searches and seizures, the Fourth
10 Amendment, was violated."

11 He's not spouting out random amendments
12 here. They're all relevant to what he believed was
13 violated when he was pulled over that day. And he
14 states it in an angry manner, as is his right.

15 Now, the jury instructions define what a
16 serious threat is, and they specifically exclude
17 political talk and exaggeration. Political talk and
18 exaggeration. We heard from the officer that what
19 Mr. Nissen was saying could be construed as political
20 argument, him trying to show him videos about his
21 politics and his beliefs. There is no question and
22 there's plenty of evidence to show that Mr. Nissen
23 was trying to educate everybody on what he thought
24 the policy and politics of his belief should be. So
25 I don't think there is a question that Mr. Nissen was

1 making a political argument. Whether or not you
2 agree with it is another question, but that's not
3 what we're here to decide.

4 Now, we move to whether or not Mr. Nissen's
5 political speech is even something that no one
6 believes in. And the officer says that they received
7 special training on these types of people, so much so
8 that they actually have to have a training to sit
9 down and talk to them about how to deal with
10 sovereign citizens, how to deal with people who don't
11 look up to their authority; how people like
12 Mr. Nissen only respect the authority of county
13 elected officials.

14 This is not some sort of fringe political
15 argument that Mr. Nissen made up in his head. This
16 is people that they get training on. They're seeing
17 it more and more. It's prevalent throughout the
18 country, so much so that they have to have a sit-down
19 with officers and tell them, "This is how you're
20 supposed to deal with it. This is what you might
21 see. This is what's going to happen. There are
22 people like this people who believe this. This is
23 how you should deal with this."

24 So it's not like Mr. Nissen made this up
25 after he drove away. It was talked about during the

1 traffic stop, it was talked about in the call
2 afterwards, and it was talked about on later
3 occasions when officers called to follow up with what
4 Mr. Nissen was trying to say.

5 Now, the United States is trying to make
6 some sort of connection that Mr. Nissen didn't have
7 the right to make a statement like that; that it was
8 so outlandish that it should be taken seriously; that
9 this is something that nobody says. But Mr. Nissen's
10 statement is not unlike statements that some of you
11 might have even made, statements that some of you
12 might have even heard said to you. Take this, for
13 example. Has anyone ever heard the statement, "If
14 you trespass onto my property, you will be shot. If
15 you try to break into my house, you will be shot. I
16 will shoot anybody who tries to break into my house
17 at night."

18 Now, through the same logic that the United
19 States tries to use, this is a true threat. We
20 should be arrested for this. People who have signs
21 posted saying, "You will be shot upon trespassing,"
22 those people are making serious threats to everybody
23 in the community. Breaking into somebody's house
24 doesn't allow for someone being shot. Maybe you
25 should ask them to leave. Shooting somebody for

1 coming into your house, that's not appropriate under
2 the United States' analysis of the way threats are
3 made.

4 So Mr. Nissen is making a statement: "I do
5 not believe that my rights should be violated," and
6 if they do, he makes the exaggerated statement that
7 he might shoot pigs. And once again, this is in the
8 context of an angry rant about a traffic stop that
9 should not be taken seriously.

10 Now, make no mistake. You will not receive
11 an instruction from the Court saying that New Mexico
12 State Police gets special treatment with regard to
13 the First Amendment. There is no jury instruction
14 that says state police have the right to take certain
15 statements more seriously than the average citizen.
16 There is no instruction that says that you cannot
17 make political talk, political exaggeration,
18 political rants at police. They get treated the same
19 just as the rest of us. If these statements are made
20 to us, the statements are made to police, they should
21 be looked at the same, through the eyes of a
22 reasonable citizen. There is no elevated seriousness
23 for who you make the threat to, and there is no
24 instruction like that. So I'm asking you to look at
25 the statements that Mr. Nissen made in the context of

1 just a regular person, because that's what we're here
2 to talk about.

3 There are no recorded statements with
4 regard to Officer Bredbach (phonetic). I'm going to
5 ask you to disregard that. It's interesting that
6 when Officer Cordova was initially examined, he said
7 the only thing he could remember was that Officer
8 Bredbach told him that Mr. Nissen was being combative
9 initially. Then after some cross-examination by the
10 United States and some jogging of his memory, he
11 goes, "Oh, by the way, oh, yeah, and he told me that
12 she (sic) was going to shoot him in the face."

13 That would be something that he would
14 remember immediately. If he was pulled over by
15 Officer Bredbach by saying, "This person is going to
16 shoot me in the face," he wouldn't remember that he
17 was being combative; he would remember a threat to
18 kill an administrator was made. He remembered there
19 at the end checking off the threat-to-a-person box.

20 All of Mr. Nissen's recorded statements are
21 consistent with him making political rants. He's
22 always talking about his rights. He's always talking
23 about the Constitution. He's always talking about
24 his right to be free from searches and seizures.
25 He's always talking about the consequences from

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 violating citizens' rights in an exaggerated way and
2 in no way, shape, or form did he ever act on or put
3 any officers in the position to believe that those
4 threats were going to be carried out. Every time
5 officers talk to him in the recorded statements that
6 we have, every time the officers met with him to see
7 what was going on as an instance of the traffic stop,
8 he was completely normal and made no overt or direct
9 threats.

10 We're all protected by the First Amendment.
11 We're all protected, and we all have the right to
12 make angry, dumb political rants from time to time.
13 And we should not be convicted of a crime for trying
14 to express those beliefs, even though we might not
15 agree with the beliefs that are trying to be
16 expressed. And when a government seeks to crack down
17 on our right to speak, all of our rights to speak, we
18 have to treat these cases with respect. Despite what
19 you might think of what Mr. Nissen's beliefs are or
20 whether they should be respected or whether they're
21 true, you have to look at them in the context of what
22 the First Amendment seeks to protect, and that's our
23 right to express those beliefs.

24 I'm asking you to see this case for what it
25 is. It's a nonserious, angry political argument, one

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
A
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 that we are all allowed to make. And because of
2 that, I want you to go back and look at the evidence.
3 Look at what we actually have. Look at the actual
4 recorded statements. Look at the fact that
5 Mr. Nissen was making political arguments. And after
6 going through all the evidence and listening to all
7 the things that Mr. Nissen had to say, then and only
8 then should you guys come to a vote. And when you
9 come to a vote, I ask you to respect Mr. Nissen's
10 right to speak, respect his political beliefs, as in
11 all of our political beliefs and our rights to
12 express them, and I ask you to find him not guilty of
13 both charges. Thank you.

14 THE COURT: Thank you, Mr. Mkhitarian.

15 Mr. Mysliwicz, do you have rebuttal on
16 behalf of the Government?

17 MR. MYSLIWICZ: Some, Your Honor. Thank
18 you.

19 THE COURT: Mr. Mysliwicz.

20 MR. MYSLIWICZ: Ladies and gentlemen, this
21 is called the rebuttal closing. Because the United
22 States has the burden, it is my honor and privilege
23 to talk to you last. And the first thing I want to
24 tell you is that there is no attorney I know who
25 could do a better job for his client than

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Mr. Mkhitarian just did in that argument. So these
2 criticisms I have are not of him or his lawyering;
3 they're of the position the defendant is in, because
4 the facts are the facts and the law is the law.

5 I want to talk about Counts 1 and 2
6 separately here, because the defense talked about
7 them separately. The defense said a true thing about
8 this case. The defense said this case is about when
9 someone crosses a line. That's accurate. The
10 defense said this case is about whether Mr. Nissen's
11 political rant should be criminalized. That's not
12 true.

13 Alex, can we bring up 2-A?

14 Thank you for your patience, ladies and
15 gentlemen. There are parts of this speech that are
16 arguably political. Those are not why we're here.
17 If it's true that the defendant is a member of a
18 group that believes only county sheriffs have legal
19 authority, he could have said that in any number of
20 ways that didn't threaten to kill anyone, and we
21 would not be here.

22 When he said, "He violated my Fourth
23 Amendment Constitution, he violated my Second and my
24 First," which Mr. Mkhitarian expertly explained,
25 that's not why we're here. "The next time he does

1 it, I'm going to plead the Fifth," which is to say,
2 "I contemplate doing something illegal, but I
3 wouldn't talk about it," which, when he says it in
4 this phone call, you can consider. You can't
5 consider, as the judge instructed, whether he
6 testifies or not here. He has an absolute right not
7 to. You're not allowed to hold that against him.
8 But in this phone call, you're allowed to consider
9 what he means.

10 The part where he says, "I'm going to do
11 whatever I'm going to do because he broke the law,
12 he's a derelict of his duties," that's not the part
13 of the phone call that brings us here. His opinion
14 that Officer Burd is derelict in his duties, that's
15 his right as an American to have that opinion, to
16 call and express that opinion, to call and shout that
17 opinion. He can shout that opinion into my face all
18 he wants. That's not a crime. It's the "make him
19 drop dead" part that's the crime. This is a case
20 about whether a line has been crossed.

21 Mr. Mkhitarian describes Mr. Nissen as a
22 law-abiding citizen. I think that's -- most
23 importantly, that's irrelevant. The judge has
24 instructed you that Mr. Nissen is only on trial for
25 Count 1 and Count 2. He's not on trial for the proof

1 of insurance. He's not on trial for the expired
2 registration. He's not on trial to carrying a
3 nondriver ID when really he had a driver ID. Nobody
4 cares. That's just context for how Officer Burd
5 treated him fairly and how Officer Burd was treated
6 in return. He's not on trial for whether he's a
7 law-abiding citizen or not.

8 Mr. Mkhitarian said that Officer Burd
9 testified that Nissen was completely compliant.
10 That's not true. He's allowed to argue what the
11 facts are and to argue facts that are not true. He's
12 allowed to do that. That's not wrong lawyering, but
13 that's not what Officer Burd testified to. Officer
14 Burd testified that when he first demanded proof of
15 insurance and registration, he got some speech about
16 how Mr. Nissen didn't have to give it. Officer Burd
17 didn't escalate. Officer Burd de-escalated. Officer
18 Burd had been trained to deal with these folks, not
19 because they're so numerous, but because without
20 training, an untrained officer might go a route that
21 Officer Burd didn't, might escalate the situation,
22 might think he was in danger and cause violence that
23 didn't need to happen. Officer Burd was more
24 circumspect than that. Officer Burd was more patient
25 than that.

1 Mr. Mkhitarian argued that we are not aware
2 of anybody being in imminent danger from Michael
3 Nissen, and that as far as we know, everybody who
4 received a threat was protected by time and space
5 from Mr. Nissen. That is irrelevant. Instruction 9
6 says it doesn't even matter if Mr. Nissen intended to
7 carry out the threat. All that matters is whether he
8 meant it as a threat and whether he knew it would be
9 taken seriously as a threat, which it was.

10 Mr. Mkhitarian argues that Mr. Nissen's
11 beliefs are not fringe political beliefs. That's
12 untrue, but it doesn't matter. If he said, "I
13 support candidate X for president and that's why I'm
14 going to shoot you in the head," it would not be the
15 candidate support that brings us here. It's the
16 threat to shoot people in the head. And I don't
17 treat Officer Burd differently than I treat anybody,
18 and the law doesn't treat Officer Burd differently.
19 And in America, we are all equal under the law. I'm
20 a little offended, but it's within proper argument to
21 complain that we're asking the threat laws to be
22 enforced differently as against police, but I'm
23 telling you we're not, and you can see the evidence
24 that we're not. If that threat was given about
25 anybody, Victoria Gurule would have taken it

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 seriously, Barbara Beuzekom would have taken it
2 seriously, any reasonable person would take these
3 threats and the way they're delivered seriously.

4 And that's what the law requires you to
5 find in this case. This is not about the political
6 parts of the phone call. It's not about whether the
7 beliefs are fringe or mainstream. We are not here to
8 punish someone's political ideas being weird. That
9 doesn't matter. All that matters is the threats.

10 So we get to Count 2, the threats to
11 Barbara Beuzekom. You are allowed to consider not
12 only Barbara Beuzekom's testimony, but you're allowed
13 to consider Officer Cordova's testimony that when
14 Barbara Beuzekom came into his office with Michael
15 Nissen waiting on hold, she looked different than she
16 usually did. It was his view that she was upset;
17 that she was usually bubbly; that she looked very
18 serious, and she relayed to him that the caller had
19 threatened to shoot her in the head, which is not
20 exactly the same words as "I'm going to shoot you in
21 your fucking face," but as the judge has instructed
22 you, some differences in recollection is normal.
23 There is nothing sinister in that, no matter what the
24 defense wants you to believe.

25 In order for you to acquit the defendant on

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Count 2, in order to follow the defendant's theory
2 that the call didn't happen, you would have to
3 assess -- and it's within your power to assess -- you
4 would have to assess that Barbara Beuzekom lied to
5 your face, that the calls that are clearly shown on
6 the log on November 26, 2018, didn't happen; I guess
7 that the log is fake; that Officer Cordova lied about
8 it and that his half of the conversation, which is
9 recorded, is actually the whole conversation.

10 Now, we know there is no mechanism for a
11 person calling to complain about the police to be
12 connected with a crimes-against-children detective.
13 You heard from Victoria and you heard from Barbara
14 how the call gets connected to her. Someone calls
15 the New Mexico State Police line, the automated voice
16 says, "Please listen. Our options have recently
17 changed." Gives the options. One of the options is
18 administration. If you select administration, it
19 goes to Barbara. That line is not recorded. Barbara
20 said that since then they have been working on
21 upgrading their system so that maybe that line could
22 be recorded. Whether that's as a result of this case
23 or not, it doesn't matter. Who cares?

24 You would have to believe that Barbara lied
25 to your face and you didn't notice; that Officer

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349



MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

1 Cordova lied to your face and you didn't notice; that
2 he, a sworn officer, sworn here to tell the truth,
3 which is the important oath, made up her reaction and
4 what she said to him about the phone call that she
5 had just received.

6 Now, I would love to have a recording of
7 that first half of that phone call on November 26.
8 But you don't need it to lack a reasonable doubt as
9 to what happened. You have Michael Nissen's phone
10 calls. In some of them he didn't threaten to kill
11 anyone, true. But you hear what it sounds like when
12 he did threaten to kill someone, and you heard
13 Barbara Beuzekom's testimony, and it's your power as
14 the judges of the facts to determine credibility,
15 just like the judge instructed. It's your power to
16 believe Barbara Beuzekom. And that's what you should
17 do.

18 And she's corroborated not only by Officer
19 Cordova, by his phone call that was recorded, by him
20 saying what it was like to interact with her at that
21 time; but also corroborated by the way that you hear
22 Michael Nissen with your own ears make these threats
23 in Exhibit 2 and make the nonthreatening speech that
24 he makes in Exhibits 1, 3, and 4. That's all you
25 need.

1 You should have no reasonable doubts when
2 you're done reviewing all this evidence. And even
3 though you have listened respectfully to all of the
4 defense's arguments, they should not convince you.
5 And instead, what you should do is find Michael
6 Nissen guilty as to Count 1 and guilty as to Count 2.
7 Thank you.

8 THE COURT: Thank you, Mr. Mysliwicz.
9 (The jury was instructed.)
10 (The jury left the courtroom.)
11 (Verdict was returned.)

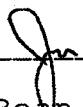
1 UNITED STATES OF AMERICA

2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages constitute
8 a true transcript of proceedings had before the said
9 Court, held in the District of New Mexico, in the
10 matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 20th day of November, 2019.

13
14 
15 Jennifer Bean, FAPR, RMR-RDR-CCR, CRR
16 Certified Realtime Reporter
17 United States Court Reporter
18 NM Certified Court Reporter #94
19 333 Lomas, Northwest
20 Albuquerque, New Mexico 87102
21 Phone: (505) 348-2283
22 Fax: (505) 843-9492
23 License expires: 12/31/19
24
25

SANTA FE OFFICE
119 East Marcy, Suite 110
Santa Fe, NM 87501
(505) 989-4949
FAX (505) 820-6349

BEAN
& ASSOCIATES, Inc.
PROFESSIONAL COURT
REPORTING SERVICE

MAIN OFFICE
201 Third NW, Suite 1630
Albuquerque, NM 87102
(505) 843-9494
FAX (505) 843-9492
1-800-669-9492
e-mail: info@litsupport.com

MICHAEL NISSEN

02508151

P.O. BOX 3540

CIBOLA COUNTY CORRECTIONAL CENTER

MILAN, NM 87021

*Legal
Mail*

CLERK OF
UNITED
ATTN: JUD
333 LOM
ALBUQUER



UNITED STATES
POSTAL SERVICE®

USPS TRACKING #



9114 9023 0722 4598 0965 17

Label 400 Jan. 2013
7690-16-000-7948



U.S. POSTAGE >> PITNEY BOWES



ZIP 87021 \$ 008.25⁰
02 4W
0000363673 FEB 11 2020

THE COURT,
STATES DISTRICT COURT
GE JAMES O. BROWNING
AS BLVD, NW
QUE, NM 87102

